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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 379

RALPH CASEY, GEORGE LA CLAIR AND EDWARD PLESA, PETITIONERS,

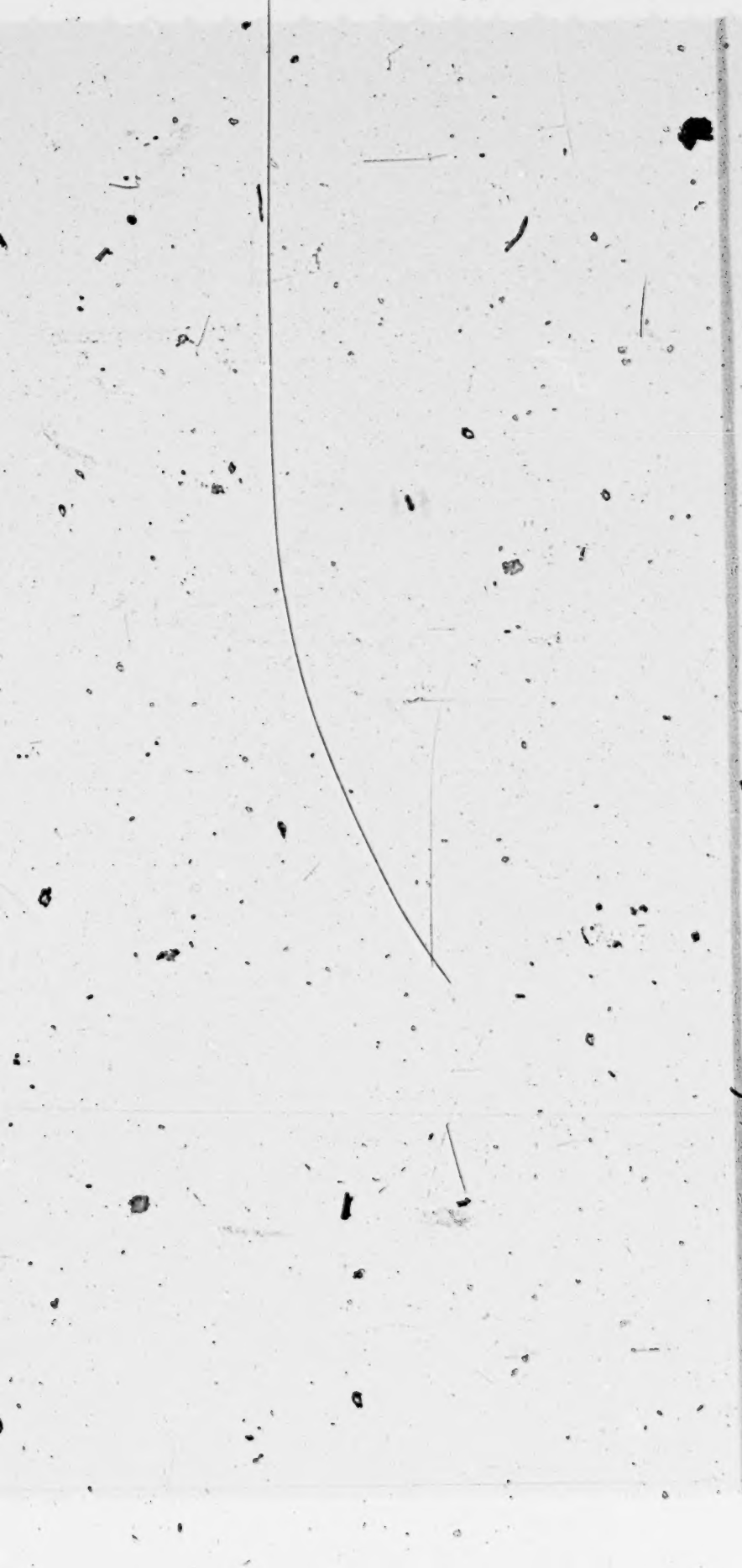
vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 10, 1951

CERTIORARI GRANTED DECEMBER 3, 1951



No. 12387

United States
Court of Appeals
for the Ninth Circuit.

RALPH CASEY, EDWARD PLESA and GEORGE LaCLAIR,

Appellants.

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Western District of Washington
Northern Division.

Phillips & Van Orden-Co., 870 Brannan Street, San Francisco, Calif.

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Affidavit of Defendant, George LaClair	13
Affidavit of Edward C. Scully	15
Affidavit of Herbert H. Arlowe	17
Affidavit of Everett K. Ames	19
Appeal:	
Certificate of Clerk (D.C.)	34
Notice of	30
Approval of Stipulation, Staying Commitment of Defendants and Authorizing Clerk to Send Transcript of Record	32
Certificate of Clerk (D.C.) to Record on Appeal	34
Court's Instructions	290
Defendants' Case	235
Indictment	2
Judgment, Sentence and Commitment	24, 26, 28
Motion for New Trial	23
Motion to Suppress Evidence and Return Seized Articles	12, 23
Names and Addresses of Counsel	1

INDEX PAGE

Notice of Appeal 30

Statement of Points on Which Appellants Will Rely 311

Transcript of Proceedings at Trial 39

Verdict 21

Witnesses for Defendants:

Aker, Lou
—direct 271

Arlowe, Herbert
—direct 281
—cross 284

Casey, Ralph
—direct 273
—cross 277
—redirect 279

Eastman, George
—direct 286
—cross 286

LaClair, George
—direct 240
—cross 257

Sweeney, Howard
—direct 288

INDEX PAGE

Witnesses for Plaintiff:

Alhadeff, Ann
—direct 164

Ames, Everett
—direct 117
—cross 149
—redirect 156

Arlowe, Herbert
—direct 51
—voir dire 79
—cross 88
—redirect 108
—recross 108

Dietsch, Robert
—direct 170
—cross 176

Hallock, Joseph
—direct 181
—cross 197

Hart, Edward
—direct 48

Hess, Byron
—direct 176

James, Patricia H.
—direct 110

INDEX PAGE

Witnesses for Plaintiff—(Continued):

James, Tillie
—direct 158

McPherson, Donald
—direct 40
—cross 47

Scully, Edward
—direct 178
—cross 181

Standard, Sam
—direct 210
—cross 214

Stüber, Karl
—direct 167

Sullivan, Gertrude
—direct 218

Turner, Raymond
—direct 220
—cross 224

Watson, John W.
—direct 109

PAGE

Proceedings in the U.S.C.A. for the Ninth Circuit ... 317

Order of submission ... 317

Order directing filing of opinion and filing and recording of judgment ... 317

Opinion, Solomon, J. ... 318

Judgment ... 327

Order directing amendment of opinion and denying petition for rehearing ... 328

Clerk's certificate ... 329

Order allowing certiorari ... 331

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United States District Court, Western District of Washington, Northern Division

No. 47792

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH CASEY, EDWARD PLESA and GEORGE La CLAIR,

Defendants.

INDICTMENT

The Grand Jury charges:

Count I.

That on or about February 7, 1949, at Seattle, in the Northern Division of the Western District of Washington, Ralph Casey, Edward Plesa, and George La Clair, and each of them did unlawfully, wilfully and knowingly use and operate certain apparatus for the transmission of energy, communications and signals by radio without a station license having first been granted by the Federal Communications Commission in accordance with Section 301, Titie 47, United States Code, authorizing the use and operation of certain apparatus used and operated by the said defendants as aforesaid, and that said defendants did unlawfully, wilfully and knowingly by the use and operation of the apparatus aforesaid transmit energy, communications

and signals by radio from one place in the State of Washington, to wit, Seattle, to a place in another state, to wit, Portland, Oregon.

All in violation of Section 301, Title 47, United States Code.

Count II.

That on or about February 5, 1949, at Seattle, in the Northern Division of the Western District of Washington, Ralph Casey, Edward Plesa and George La Clair and each of them did unlawfully, wilfully and knowingly use and operate certain apparatus for the transmission of energy, communications and signals by radio without a station license having first been granted by the Federal Communications Commission in accordance with Section 301, Title 47, United States Code, authorizing the use and operation of certain apparatus used and operated by the said defendants as aforesaid, and that said defendants did unlawfully, wilfully, and knowingly by the use and operation of the apparatus aforesaid transmit energy, communications and signals by radio from one place in the State of Washington, to wit, Seattle, to a vessel sailing upon the navigable waters of the United States, to wit, Puget Sound.

All in violation of Section 301, Title 47, United States Code.

Count III.

That on or about February 10, 1949, at Seattle, in the Northern Division of the Western District

of Washington, Ralph Casey, Edward Plesa and George La Clair and each of them did unlawfully, wilfully and knowingly use and operate certain apparatus for the transmission of energy, communications and signals by radio without a station license having first been granted by the Federal Communications Commission in accordance with Section 301, Title 47, United States Code, authorizing the use and operation of certain apparatus used and operated by the said defendants as aforesaid, and that defendants did unlawfully, wilfully and knowingly by the use and operation of the apparatus aforesaid transmit energy, communications and signals by radio from one place within the State of Washington, to wit, Seattle, to other places within the State of Washington and the effects of such use and operation extended beyond the borders of the said State of Washington, and caused interference with the transmission of energy, communications and signals from places in other states to places within the State of Washington.

All in violation of Section 301, Title 47, United States Code.

Count IV.

That on or about February 7, 1949, at Seattle, in the Northern Division of the Western District of Washington, Ralph Casey, Edward Plesa and George La Clair and each of them did unlawfully, wilfully and knowingly use and operate certain apparatus for the transmission of energy, communi-

cations and signals by radio from one place within the State of Washington, to wit, Seattle, to a place in another state, to wit, Portland, Oregon, without a radio operator's license having first been issued by the Federal Communications Commission to said defendants in accordance with Section 318 of Title 47, United States Code, the said certain apparatus used and operated by the said defendants, being then and there set up as a radio station of the style and type for which a radio station license is required.

All in violation of Section 318, Title 47, United States Code.

Count V.

That on or about February 5, 1949, at Seattle, in the Northern Division of the Western District of Washington, Ralph Casey, Edward Plesa and George La Clair and each of them did unlawfully, wilfully and knowingly use and operate certain apparatus for the transmission of energy, communications and signals by radio from one place within the State of Washington, to wit, Seattle, to a vessel sailing upon the navigable waters of the United States, to wit, Puget Sound, without a radio operator's license having first been issued by the Federal Communications Commission to said defendants in accordance with Section 318 of Title 47, United States Code, the said certain apparatus used and operated by the said defendants being then and there set up as a radio station of the style and type for which a radio station license is required.

All in violation of Section 318, Title 47, United States Code.

Count VI.

That on or about February 10, 1949, at Seattle, in the Northern Division of the Western District of Washington, Ralph Casey, Edward Plesa and George La Clair and each of them did unlawfully, wilfully and knowingly use and operate certain apparatus for the transmission of energy, communications and signals by radio from one place within the State of Washington, to wit, Seattle, to other places within the State of Washington and the effects of such use and operation extended beyond the borders of the said State of Washington and caused interference with the transmission of energy, communications and signals from places in other states to places within the State of Washington, without a radio operator's license having first been issued by the Federal Communications Commission to said defendants in accordance with Section 318 of Title 47, United States Code, the said certain apparatus used and operated by the said defendants being then and there set up as a radio station of the style and type for which a radio station license is required.

All in violation of Section 318, Title 47, United States Code.

Count VII.

That Ralph Casey, Edward Plesa and George La Clair and each of them beginning on or about

January 23, 1949, at Olympia, Washington, and continuing thereafter until on or about February 10, 1949, at Seattle, Washington, in the Northern Division of the Western District of Washington did then and there knowingly, wilfully and unlawfully combine, conspire, confederate and agree together, and with each other, and together with sundry and diverse other persons to the grand jurors unknown, to commit certain offenses against the United States of America, that is to say:

To knowingly, wilfully, and unlawfully use and operate certain apparatus for the transmission of energy, communications and signals by radio without a station license having first been granted by the Federal Communications Commission in accordance with Section 301, Title 47, United States Code, authorizing the use and operation of said certain apparatus and to knowingly, wilfully, and unlawfully, by the use and operation of the apparatus aforesaid, transmit energy, communications and signals by radio from one place within the State of Washington, to wit, Seattle, Washington, to a place in another state, to wit, Portland, Oregon, and to a vessel sailing upon the navigable waters of the United States, to wit, Puget Sound, and to other places within the State of Washington, the effects of such use and operation extending beyond the borders of the said State of Washington and causing interference to the transmission of energy, communications, and signals from places in other states to places within the State of Washington, all

in violation of Section 301, Title 47, United States Code.

To knowingly, wilfully, and unlawfully use and operate the said certain apparatus for the transmission of energy, communications and signals by radio from and to the places aforesaid without a radio operator's license first having been issued by the Federal Communications Commission to said defendants in accordance with Section 318, Title 47, United States Code, the said certain apparatus being set up as a radio station of the style and type for which a radio station license is required, all in violation of Section 318, Title 47, United States Code.

Overt Acts

That, after the formation of the aforesaid conspiracy and in pursuance thereof, and in order to effect the object of the aforesaid conspiracy and for the purpose of executing said unlawful conspiracy and agreement, the hereinafter parties did certain overt acts, that is to say,

1. On January 23, 1949, Ralph Casey and George La Clair transported the aforesaid radio apparatus, consisting of transmitter, power supply, and associated equipment, together with receiving equipment designed to be worn concealed on the body and utilizing a hearing aid ear piece as an earphone to the Governor Hotel, Olympia, Washington, and on January 24 said defendants together with Edward Plesa transported the said equipment from said hotel.

2. On January 24, 1949, Ralph Casey, Edward Plesa and George La Clair transported the aforesaid radio apparatus to the Olympian Hotel and on January 25 said defendants transported the said equipment from said hotel.

3. On January 25, 1949, Ralph Casey, Edward Plesa and George La Clair transported the said radio apparatus to the Winthrop Hotel, Tacoma, Washington, and on January 26, 1949, transported said apparatus from said hotel.

4. On January 28, 1949, Ralph Casey, Edward Plesa and George La Clair transported said radio apparatus to the Olympian Hotel, Olympia, Washington.

5. On January 29, 1949, Ralph Casey, Edward Plesa and George La Clair operated the said radio apparatus at Olympia, Washington, and at that time broadcast the running of the horse race in progress at Hialeah Race Track, Miami, Florida, and broadcast the results of said race.

6. On January 30, 1949, Ralph Casey, Edward Plesa and George La Clair transported said radio apparatus to Benjamin Franklin Hotel, Seattle, Washington.

7. On February 2, 1949, Edward Plesa and Ralph Casey obtained a room at the Stratford Hotel, Seattle, Washington, for the purpose of using the radio apparatus therein.

8. On February 2 and 3, 1949, Edward Plesa,

Ralph Casey and George La Clair operated the said radio apparatus at Seattle, Washington, and broadcast the horse races in progress at Santa Anita, California, and broadcast the results of said races.

9. On February 4, 1949, Edward Plesa, Ralph Casey and George La Clair tested the said radio apparatus from the Stratford Hotel, Seattle, Washington, by broadcasting test signals.

10. On February 4, 1949, Edward Plesa, Rlaph Casey and George La Clair operated the said radio apparatus from the Stratford Hotel, Seattle, Washington, and broadcast the horse races in progress at Santa Anita, California, and broadcast the results thereof.

11. On February 5, 1949, Ralph Casey obtained a room at the Arlington Hotel, Seattle, Washington, for purposes of using the radio apparatus therein, registering in said hotel as R. B. Hurly.

12. On February 5, 1949, Edward Plesa, Ralph Casey and George La Clair transported said radio apparatus to Arlington Hotel, Seattle, Washington.

13. On February 5, 1949, Edward Plesa, Ralph Casey and George La Clair tested the said radio apparatus from the Arlington Hotel, Seattle, Washington, by broadcasting testing signals.

14. On February 5, 1949, Edward Plesa, Ralph Casey and George La Clair operated the said radio apparatus from the Arlington Hotel, Seattle, Wash-

ington, and broadcast the horse races in progress at Santa Anita, California, and the results thereof.

15. That on February 7, 1949, Edward Plesa, Ralph Casey and George La Clair obtained a suite of rooms at the Benjamin Franklin Hotel for the purpose of using the radio apparatus therein, and transported the said radio apparatus to said quarters.

16. That on February 7, 1949, Ralph Casey and Edward Plesa concealed on their bodies radio receivers using a hearing aid ear piece for an earphone and, thus equipped in that manner, assisted in the testing of the aforesaid radio transmitter by checking testing signals broadcast over said apparatus by George La Clair and by carrying out instructions and directions broadcast by George La Clair over said apparatus.

17. That on February 7, 1949, George La Clair operated the said radio transmitting apparatus from the Benjamin Franklin Hotel and broadcast testing signals and instructions and directions as aforesaid.

18. That on February 9 and 10, 1949, Edward Plesa, Ralph Casey and George La Clair operated the said radio apparatus from the Benjamin Franklin Hotel, Seattle, Washington, broadcasting testing signals and the running of the horse races in progress at Hialeah, Miami, Florida, at the Fairgrounds, New Orleans, Louisiana, and at Santa Anita, California, and the results of said races.

All in violation of Section 371, Title 18, United States Code.

A True Bill.

/s/ THOMAS H. OLM,
Foreman.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ VAUGHN E. EVANS,
Assistant United States Attorney.

[Endorsed]: Filed February 17, 1949

[Title of District Court and Cause.]

MOTION TO SUPPRESS EVIDENCE AND RETURN SEIZED ARTICLES

Comes Now the defendant, George La Clair, by his attorney of record, Allan Pomeroy, and moves the Court to enter an order suppressing as evidence and directing the return to this defendant of the radio equipment and other articles seized from his Packard automobile. This motion is based on the records and files herein and the attached affidavit.

/s/ ALLAN POMEROY,
Attorney for Defendants.

[Title of District Court and Cause.]

AFFIDAVIT OF DEFENDANT GEORGE LaCLAIR

State of Washington,
County of King—ss.

George LaClair, being first duly sworn on oath, deposes and says: That he is one of the defendants in the above-entitled action and that he makes this affidavit in support of his motion to suppress evidence herein; that for a considerable period of time prior to the arrest of this defendant and the other defendants herein, they had been under surveillance by federal officers, who were listening outside the rooms occupied by the defendants in the Benjamin Franklin Hotel in Seattle;

That on the day this defendant and the others were arrested they were in their rooms at the Benjamin Franklin Hotel, in Seattle, Washington, and were arrested by several federal officers, who had with them warrants for the arrest of the defendants; that subsequent to said arrest the officers made a search of the rooms occupied by the defendants, opening drawers in the dressers and looking through the wastebaskets. At or about the same time Seattle police officers, working in conjunction with the federal officers, seized and searched affiant's automobile which was parked in a garage separate from and at a distance from the said hotel and took from said automobile some radio equipment and other articles. That said search and seizure was

against the wishes of affiant and the other defendants.

/s/ GEORGE LaCLAIR.

Subscribed and sworn to before me this 16th day of August, 1949.

/s/ MARIAN M. PARKS,
Notary Public in and for the State of Washington,
Residing at Seattle.

Receipt of Copy acknowledged.

[Endorsed]: Filed August 18, 1949.

[Title of District Court and Cause.]

Comes Now the plaintiff, United States of America, and furnishes herewith affidavits of

Herbert H. Arlowe,
Everett K. Ames,
Edward C. Scully,

in opposition to the defendant George LaClair's Motion to Suppress Evidence.

/s/ J. CHARLES DENNIS,
United States Attorney.

/s/ JOHN F. DORE,
Asst. United States Attorney.

AFFIDAVIT OF EDWARD C. SCULLY

United States of America,
Western District of Washington,
Northern Division—ss.

Edward C. Scully, being first duly sworn, on oath deposes and says:

That I am a Deputy United States Marshal for the Western District of Washington, and that I was so employed on or about February 10, 1949. On that day I was on duty in the United States Marshal's Office in the Federal Court House, Seattle, Washington, when a Mr. Herbert H. Arlowe of the Federal Communications Commission came in to secure the arrest of Ralph Casey, Edward Plesa and George LaClair, who were suspected of operating an unlicensed radio station in the Benjamin Franklin Hotel in Seattle. After waiting some time to see the United States Commissioner, Mr. Arlowe and I finally secured warrants of arrest and proceeded to the Benjamin Franklin Hotel. I thought that the suspects were probably in the lobby of the hotel but I did not see them there and asked Mr. Arlowe "where are they at?" and Mr. Arlowe told me that they were last in room 1217 before he left the hotel to secure the warrants. We then proceeded upstairs to the designated room and I knocked on the door. The door was opened by Mr. Casey and I announced who I was and the purpose of my mission. Casey identified himself and I served the warrant upon him, and Mr. Plesa then identified himself and I served the warrant upon him, stating that both he

and Mr. Casey were under arest. Mr. Plesa then asked me "What are we to do about this?" and I told him that they would have to come with me and put up bond or go to jail. I then was anxious to discover the whereabouts of Mr. LaClair, and there being several other people in the room, I said that if I could not find Mr. LaClair that it would be necessary for me to take everyone in the room to jail. It was then that Mr. LaClair stepped forward and identified himself and I served the warrant of arrest upon him. I then left the hotel together with these men and took them to the United States Marshal's Office in the Federal Court House.

I never saw the Packard automobile belonging to Mr. LaClair nor did I at any time search it.

/s/ EDWARD C. SCULLY.

Subscribed and sworn to before me, this 25th day of August, 1949.

[Seal] /s/ MILLARD P. THOMAS,
Clerk, United States District Court, Western District of Washington.

AFFIDAVIT OF HERBERT H. ARLOWE

United States of America,
Western District of Washington,
Northern Division—ss.

Herbert H. Arlowe, being first duly sworn, on oath deposes and says:

That he is the Engineer in Charge of the Federal Communications Commission; that he investigated the case of the United States vs. Ralph Casey, Edward Plesa and George LaClair; that on or about February 10, 1949, he obtained three warrants for the arrest of the three above-named defendants from the United States Commissioner; that prior to obtaining these warrants he, along with the other investigators of this department, had been investigating the activities of some operators who were operating an unlicensed radio station. Upon investigation we located the operations as taking place in the Benjamin Franklin Hotel, and after considerable investigation, and by various means at our disposal, ascertained that the unlicensed equipment was being operated in room 1217 of the Benjamin Franklin Hotel. As I stated before, along with some other assistants, we located the operation as being from room 1217, the room of the defendants. We could hear voices within the room testing the apparatus of the radio paraphernalia and then departed for the United States Commissioner's office to obtain a warrant for the arrest of the occupants of that room. There was some little delay of approximately thirty minutes in wait-

ing for the Commissioner. However, after he arrived we obtained the warrants and proceeded back to the hotel with Deputy Marshal Edward C. Scully for the purpose of arresting Ralph Casey, Edward Plesa and George LaClair. After arriving at the hotel Marshal Scully proceeded to the room and arrested these three men and removed them from the hotel. Before Deputy Marshal Scully took the men from the hotel room I searched the room for the unlicensed radio transmitter, and not finding it there or any other radio equipment, I called my office and was advised that the hotel manager had called and reported that the baggage had been taken down to LaClair's Packard car at the Motor Ramp Garage. I then proceeded immediately to the car and the attendant unlocked the back of the car at our request and Mr. Ames and the attendant removed the two pieces of luggage found there. We opened these pieces of luggage and found an unlicensed radio transmitter and associated equipment including a very small radio receiver, capable of being concealed under the user's clothing, together with a hearing-aid phone attached to it. This search of the car was made a couple of minutes after and incident to the arrest for the purpose of obtaining the equipment used.

Mr. Donofrio was present at the time of the search and did not object. He said that he had been sent to get Mr. LaClair's car. I would say that it took us about two minutes to proceed from room 1217 to the Motor Ramp Garage where we searched the car incident to the arrest. Mr. Standard, the

assistant manager of the hotel, had held the garage claim stub as a security for the payment owed by Casey and the others on the room because a big bill had been run up. Mr. Donofrio did not have the stub when he went to get the Packard. Mr. Ames had already located the luggage so that was the reason we proceeded to the Ramp Garage to search the Packard.

/s/ HERBERT H. ARLOWE.

Subscribed and sworn to before me, this 25th day of August, 1949.

[Seal] /s/ MILLARD P. THOMAS,
Clerk, United States District Court, Western District of Washington.

AFFIDAVIT OF EVERETT K. AMES

United States of America,
Western District of Washington,
Northern Division—ss.

Everett K. Ames, being first duly sworn, on oath deposes and says:

That I am a Radio Engineer for the Federal Communications Commission; that on or about February 10 of this year I was working on the investigation of the operations of an unlicensed radio station in the city of Seattle. I worked in conjunction with Engineer in Charge Herbert H. Arlowe and Radio Engineer Joseph Hallock. On February 10, 1949, after exhaustiye investigation, we finally

located the operation of the equipment in room 1217 of the Benjamin Franklin Hotel. After definitely locating the place of operation in room 1217 and hearing certain voices testing the equipment in that room, we decided to obtain a warrant for the arrest of the occupants of the room. Mr. Arlowe left and went for the warrants. Mr. Hallock and I decided to leave the hotel because we believed that we had already been observed by one of the suspects, so we went back to the office. Shortly thereafter the office received a telephone call from Mr. Standard, assistant manager of the Benjamin Franklin Hotel, reporting that the occupants of room 1217, Ralph Casey, Edward Plesa and George LaClair, were checking out and that they had ordered their baggage taken to their Packard automobile located in the Motor Ramp Garage at 6th Avenue and Westlake. This garage is located a short distance southeast of the hotel. After we received the message Mr. Hallock and I proceeded immediately to the Motor Ramp Garage. There we talked to an attendant and discovered that he had the keys to the Packard automobile belonging to Mr. LaClair. I then went with the attendant to the car and the attendant opened the back trunk of the car and in the trunk we observed certain luggage containing a transmitter and receiver. We did not remove it from the car, but after looking at it we again locked the car and went up to wait for the owner of the car to arrive. While waiting we decided to call the City Police and have them present in case any disturbance took place. They did not search the car but merely stood by at

a distance. I subsequently left the garage and proceeded to room 1217 of the hotel. The arrest had already been made and the defendants were still in the room when I arrived. I then returned to the garage with Mr. Arlowe. I asked the attendant to unlock the car and together we removed the two pieces of luggage and found an unlicensed radio transmitter, power supply microphone and associated equipment.

/s/ EVERETT K. AMES.

Subscribed and sworn to before me, this 25th day of August, 1949.

[Seal] /s/ MILLARD P. THOMAS,
Clerk, United States District Court, Western District of Washington.

Receipt of Copy acknowledge.

[Endorsed]: Filed August 25, 1949.

[Title of District Court and Cause.]

VERDICT

We, the jury in the above-entitled cause, find the defendant, Ralph Casey is guilty as charged in Count I of the Indictment; and further find the defendant, Ralph Casey is guilty as charged in Count II of the Indictment; and further find the defendant, Ralph Casey is guilty as charged in Count III of the Indictment; and further find the defendant

Ralph Casey is guilty as charged in Count IV of the Indictment; and further find the defendant, Ralph Casey is guilty as charged in Count V of the Indictment; and further find the defendant, Ralph Casey is guilty as charged in Count VI of the Indictment; and further find the defendant, Ralph Casey not guilty as charged in Count VII of the Indictment;

and further find the defendant, Edward Plesa is guilty as charged in Count I of the Indictment; and further find the defendant, Edward Plesa is guilty as charged in Count II of the Indictment; and further find the defendant, Edward Plesa is guilty as charged in Count III of the Indictment; and further find the defendant, Edward Plesa is guilty as charged in Count IV of the Indictment; and further find the defendant, Edward Plesa is guilty as charged in Count V of the Indictment; and further find the defendant, Edward Plesa is guilty as charged in Count VI of the Indictment; and further find the defendant, Edward Plesa not guilty as charged in Count VII of the Indictment;

and further find the defendant, George LaClair is guilty as charged in Count I of the Indictment; and further find the defendant, George LaClair is guilty as charged in Count II of the Indictment; and further find the defendant, George LaClair is guilty as charged in Count III of the Indictment; and further find the defendant, George LaClair is guilty as charged in Count IV of the Indictment; and further find the defendant, George LaClair is guilty as

charged in Count V of the Indictment; and further find the defendant, George LaClair, is guilty as charged in Count VI of the Indictment; and further find the defendant, George LaClair not guilty as charged in Count VII of the Indictment.

/s/ KIRBY SPEYER,
Foreman.

[Endorsed]: Filed September 6, 1949.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Come Now the defendants herein, Ralph Casey, Edward Plesa, and George LaClaire, by their attorneys of record and respectfully move the court to grant them a new trial for the following reasons:

1. The court erred in failing to suppress plaintiff's exhibits 5 and 6 and in admitting them into evidence over defendants' objection.

2. The court erred in admitting testimony as to tests made by the government of plaintiff's exhibits 5 and 6 over defendants' objection.

3. The court erred in admitting evidence on behalf of the plaintiff as to the existence, contents, substance, purport, effect and meaning of intercepted radio communications allegedly transmitted by the defendants, said evidence being admitted over the objection of defendants.

4. The court erred in failing to grant defend-

ants' motion to strike all testimony introduced on behalf of the plaintiff as to the existence, contents, substance, purport, effect, and meaning of intercepted communication allegedly transmitted by the defendants.

/s/ ALLAN POMEROY,

/s/ ROBERT C. ROYCE,

Attorneys for Defendants.

[Endorsed]: Filed September 10, 1949.

United States District Court, Western District of Washington, Northern Division

No. 47792

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH CASEY,

Defendant.

JUDGMENT, SENTENCE AND COMMITMENT

On this 12th day of September, 1949, the attorney for the Government, and the defendant, Ralph Casey, appearing in person and being represented by Allan Pomeroy, his attorney, the Court finds the following:

That prior to the entry of his plea, a copy of the Indictment was given the defendant and the defendant entered a plea of not guilty and a trial was

held, resulting in a verdict of guilty as to Counts I, II, III, IV, V and VI thereof; that by order of this Court the presentence investigation was dispensed with; now, therefore.

It Is Adjudged that the defendant, Ralph Casey, has been convicted by jury verdict and is guilty and is convicted of the offense of violation of Sections 301 and 318, Title 47, U. S. C., as charged in Counts I, II, III, IV, V and VI of the Indictment, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

It Is Adjudged and Ordered that the defendant, Ralph Casey, on Count I of the Indictment, be committed to the custody of the Attorney General of the United States for confinement in the Federal Prison Camp at McNeil Island, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Seven Months.

It Is Further Adjudged and Ordered that the defendant, Ralph Casey, shall pay a fine to the United States of America in the sum of One Dollar on each of Counts II, III, IV, V and VI of the Indictment, and shall stand committed until such fines are paid.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or

other qualified officer, and that said copy serve as the commitment of the defendant.

Done in Open Court this 12th ay of September, 1949.

/s/ JOHN C. BOWEN,
United States District Judge.

Presented by:

/s/ JOHN F. DORE,
Asst. United States Attorney.

Violation of Federal Communications Act.

[Endorsed]: Filed September 12, 1949.

United States District Court, Western District of Washington, Northern Division

No. 47792

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE LaCLAIR,
Defendant.

JUDGMENT, SENTENCE AND COMMITMENT

On this 12th day of September, 1949, the attorney for the Government, and the defendant, George LaClair, appearing in person and being represented by Allan Pomroy, his attorney, the Court finds the following:

That prior to the entry of his plea, a copy of the

Indictment was given the defendant and the defendant entered a plea of not guilty and a trial was held, resulting in a verdict of guilty as to Counts I, II, III, IV, V and VI thereof; that by order of this Court the presentence investigation was dispensed with; now, therefore,

It Is Adjudged that the defendant, George LaClair, has been convicted by jury verdict and is guilty and is convicted of the offense of violation of Sections 301 and 318, Title 47, U. S. C., as charged in Counts I, II, III, IV, V and VI of the Indictment, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged and Ordered that the defendant, George LaClair, on Count I of the Indictment, be committed to the custody of the Attorney General of the United States for confinement in the Federal Prison Camp at McNeil Island, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Seven Months.

It Is Further Adjudged and Ordered that the defendant, George LaClair, shall pay a fine to the United States of America in the sum of One Dollar on each of Counts II, III, IV, V and VI of the Indictment, and shall stand committed until such fines are paid.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or other qualified officer, and that said copy serve as the commitment of the defendant.

Done In Open Court this 12th day of September, 1949.

/s/ JOHN C. BOWEN,
United States District Judge.

Presented by:

/s/ JOHN F. DORE,
Asst. United States Attorney.

Violation of Federal Communications Act.

[Endorsed]: Filed September 12, 1949.

United States District Court, Western District of Washington, Northern Division

No. 47792

UNITED STATES OF AMERICA,
Plaintiff,

vs.

EDWARD PLESA,
Defendant.

JUDGMENT, SENTENCE AND COMMITMENT

On this 12th day of September, 1949, the attorney for the Government, and the defendant, Edward Plesa, appearing in person and being represented

by Alan Pomeroy, his attorney, the Court finds the following:

That prior to the entry of his plea, a copy of the Indictment was given the defendant and the defendand entered a plea of not guilty and a trial was held, resulting in a verdict of guilty as to Counts I, II, III, IV, V, and VI thereof; that by order of this Court the presentence investigation was dispensed with; now, therefore,

It Is Adjudged that the defendant, Edward Plesa, has been convicted by jury verdict and is guilty and is convicted of the offense of violation of Sections 301 and 318, Title 47, U. S. C., as charged in Counts I, II, III, IV, V and VI of the Indictment, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged and Ordered that the defendant, Edward Plesa, on Count I of the Indictment, be committed to the custody of the Attorney General of the United States for confinement in the Federal Prison Camp at McNeil Island, Washington, or in such other like institution as the Attorney General of the United States or his authorized representative may by law designate, for the period of Five Months.

It Is Further Adjudged and Ordered that the defendant, Edward Plesa, shall pay a fine to the United States of America in the sum of One Dollar on each of Counts II, III, IV, V and VI of the

Indictment, and shall stand committed until such fines are paid.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of this Judgment, Sentence and Commitment to the United States Marshal or other qualified officer, and that said copy serve as the commitment of the defendant.

Done In Open Court this 12th day of September, 1949.

/s/ JOHN C. BOWEN,
United States District Judge.

Presented by:

/s/ JOHN F. DORE,
Asst. United States Attorney.

Violation of Federal Communications Act.

[Endorsed]: Filed September 12, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Names and addresses of Appellants: Ralph Casey, George LaClair and Edward Plesa; 304 Spring St., Seattle 4, Washington.

Names and addresses of Appellants' attorneys: Allan Pomeroy and Robert C. Royce, 304 Spring St., Seattle 4, Washington.

Appellants were convicted by a jury on six counts charging them with operating a radio station without a radio license on different dates, Title 47 U.

S. C. 301, and operating a radio station on different dates without having had issued to them a raido operators' license, Title 47 U. S. C. 318.

Subsequent to the verdict the appellants filed a motion for new trial and on the 12th day of September, 1949, the above-entitled court denied appellants' motion for new trial and entered judgments of conviction on all six counts as to all three defendants and sentenced them as follows:

Ralph Casey—Seven months confinement on Count I; one dollar on each of counts II, III, IV, V and VI.

George LaClair—Seven months confinement on Count I; one dollar on each of counts II, III, IV, and VI.

Edward Plesa—Five months confinement on Count I; one dollar fine on each of counts II, III, IV, V and VI.

Appellants are not in confinement, having been admitted to baif by the trial court pending appeal.

We, the above-named appellants, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the above-stated order denying defendants' motion for new trial and the above-stated judgments.

/s/ ALLAN POMEROY,
/s/ ROBERT C. ROYCE,
Attorneys for Appellants.

Dated: September 19, 1949.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 20, 1949.

[Title of District Court and Cause.]

APPROVAL OF STIPULATION, STAYING COMMITMENT OF DEFENDANTS AND AUTHORIZING CLERK TO SEND TRANSCRIPT OF RECORD

This Matter having been brought on before the undersigned Judge of the above-entitled court on the motion of the defendants by their substituted counsel of record that the motion of the defendants that they be allowed to move for reinstatement and redocketing of the appeal in the above-entitled action, heretofore taken on September 12, 1949, and dismissed by the Circuit Court of Appeals on January 9, 1950, for failure to deposit the approximate cost of printing of the record in said cause, be granted, and the Court having read the stipulation heretofore entered into by and between the United States District Attorney for this District, and his assistant, and F. M. Reischling, counsel for the defendants, and it appearing to the Court that good cause has been shown for the reinstatment and redocketing of said appeal, and that the transcript of the record should be returned to the Clerk of the Circuit Court for printing, and that pending the determination of said appeal the commitment of the defendants should be stayed and they remain at liberty on bail as has hereinbefore been fixed, now, therefore,

It Is Hereby Ordered, Adjudged and Decreed by this Court that the defendants in this cause be per-

mitted to apply to the said Circuit Court for reinstatment and redocketing of said appeal, and that the Clerk of this Court be and hereby is authorized to return the transcript in said cause to said Clerk for printing, and

It Is Further Ordered, Adjudged and Decreed that pending the determination of the issues in this matter on appeal that the commitment of the defendants be stayed and they remain at liberty under the bonds hereinbefore fixed by this Court.

Done In Open Court this 1st day of March, 1950.

/s/ JOHN C. BOWEN,
United States District Judge.

Presented by:

/s/ F. M. REISCHLING,
Of Counsel for Defendants.

Approved and notice of presentation waived.

/s/ J. CHARLES DENNIS,
U. S. Attorney.

/s/ JOHN F. DORE, JR.,
Asst. U. S. Attorney.

[Endorsed]: Filed March 1, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT, TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Sub-division I of Rule 11 as Amended of the United States Court of Appeals for the Ninth Circuit, and Rule 39(b) (1) of the Federal Rules of Criminal Procedure, I am transmitting herewith as the record on appeal in the above-entitled cause, all of the original pleadings on file and of record in said cause in my office at Seattle, as set forth below, and that said pleadings, together with the Plaintiff's Exhibits numbered 9 and 11, constitute the record on appeal from the Judgments filed and entered September 12, 1949, to the United States Court of Appeals at San Francisco, California, to wit:

1. Indictment.

2. Arraignment and Plea.

3. Praecipe for Subpoena (Carolyn Larson, et al.).

4. Motion to Suppress Evidence and Return Seized Articles.

5. Praecipe for Subpoenae (Donald L. McPherson, et al.).

6. Praecipe for Subpoenae (Samuel Standard, et al.).

7. Memorandum of Authorities in Support of Motion to Suppress.

8. Marshal's return on Subpoena (John Watson).

9. Marshal's return on Subpoenae (Bess F. Donnelly, et al.).

10. Marshal's returns on Subpoenae (Jean Page et al.).

11. Marshal's return on Subpoena (Claude L. Perkins).

12. Marshal's returns on Subpoenae (Edward H. Hart, et al.).

13. Affidavits of Edward C. Scully, Herbert H. Arlowe and Everett K. Ames.

14. Memorandum of Authorities in Answer to Government's Position.

15. Memorandum of Authorities Against Motion to Suppress Evidence.

16. Marshal's returns on Subpoenae (Walker et al.).

17. Marshal's return on Subpoena (Larson).

18. Marshal's return on Subpoena (Johnson).

19. Praecipe for Subpoenae (Roy Turner et al.).

20. Praecipe for Subpoena (Wiebelhaus).

21. Marshal's return on Subpoena (Wiebelhaus).

22. Praecipes for Subpoenae (Bob Colman et al.).

23. Government's Requested Instructions.

24. Praecipe for Subpoenae in blank.

25. Marshal's return on Subpoena (Turner).

26. Marshal's return on Subpoena (Colman).

27. Praecipe for Subpoena (Walter Mills).

28. Praecipe for Subpoenae in blank.

28½. Defendants' Requested Instructions.

29. Verdict.

30. Marshal's return on Subpoenae (Roy Turner et al.)

31. Motion for New Trial.

32. Marshal's return on Subpoena (George Eastman).

33. Judgment, Sentence and Commitment (Ralph Casey).

34. Judgment, Sentence and Commitment (George LaClair).

35. Judgment, Sentence and Commitment (Edward Plesa).

36. Recognizance of Defendant on Appeal (Casey).

37. Recognizance of Defendant on Appeal (LaClair).

38. Recognizance of Defendant on Appeal (Plesa).

39. Affidavit of Laura LaClaire.

40. Order Exonerating Bail (Casey).

41. Order Exonerating Bail (LaClair).

42. Order Exonerating Bail (Plesa).

43. Notice of Appeal.

44. Mandate dismissing appeal.

45. Substitution of Attorneys (Withdrawal of Allan Pomeroy).

46. Notice of Substitution of F. M. Reischling for Allan Pomeroy as attorney for defendants.

47. Stipulation for Reinstatement and redocketing of Appeal and For Stay of Commitment Pending Determination of Case on Appeal.

48. Order Staying Commitment of Defendants and Authorizing Clerk to return Record on Appeal to Appellate Court.

Plaintiff's Exhibits numbered 5 and 6 (Radio equipment and transmitter) received in evidence at the trial of this cause are bulky, heavy and valuable and are not forwarded with the original record but are retained subject to further direction.

In Witness Whereof I have hereunto set my hand

and affixed the official seal of said District Court at Seattle this 2d day of March, 1950.

MILLARD P. THOMAS,
Clerk,

[Seal]: /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: No. 12387, United States Court of Appeals for the Ninth Circuit. Ralph Casey, Edward Plesa and George LaClair, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed: October 24, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the District Court of the United States, for the Western District of Washington, Northern Division

No. 47792

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH CASEY, EDWARD PLESA and GEORGE LaCLAIR,

Defendants.

Before: The Honorable John C. Bowen, District Judge.

TRANSCRIPT OF PROCEEDINGS AT TRIAL

Seattle, Washington, August 30, 1949

10:15 o'Clock A.M.

Appearances:

Assistant United States Attorney John F. Dore and Assistant United States Attorney Vaughn E. Evans, appearing for and on behalf of plaintiff.

Allan Pomeroy and Robert C. Royce, appearing for and on behalf of defendants.

Whereupon, a jury having been duly impanelled and sworn, and opening statement made on behalf of plaintiff, the following proceedings were had and done, to wit:

The Court: Call plaintiff's first witness.

Mr. Evans: Mr. McPherson, please.

DONALD McPHERSON

called as a witnes by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows: [2*]

* * *

Direct Examination

By Mr. Evans:

Q. Will you state whether or not you have ever had any experience as a radio operator?

A. Yes, I have.

Q. Will you tell us what that experience has been?

A. I have operated an amateur station over a period of years, since, I think it was 1929 or 1930. I am not exactly sure of that date now. I operated for the United States Government at a station in Boise, Idaho. The call letters were WABJ.

Q. Will you state whether or not you now have a license to operate an amateur station?

A. I have.

Q. State whether or not you likewise have a license for the station operation? [3]

A. I have.

Q. On the evening of February 7, 1949, state whether or not you were using your radio set?

A. I was.

Q. State whether or not you heard any unusual signal at that time? A. I did.

Q. Will you state what time of the evening that was?

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* Page numbering appearing at bottom of page of original Reporter's Transcript.

(Testimony of Donald McPherson.)

A. About 1910 p.m., Pacific Standard Time.

Q. In regular clock time, what time would that be? A. 7:10 in the evening.

Q. That was on what day? A. February 7.

Q. What year? A. 1949.

Q. State at what frequency, or what other means you [4] have of identifying upon your radio band, that you heard this unusual signal?

A. Approximately 3540 kilocycles.

Q. 3540 kilocycles is within what band, if you know, as set aside by the Federal Communications Commission?

A. It is the amateur band, within the limits of 3500 kilocycles and 4000 kilocycles, authorized for amateur communication.

Q. What type of communication is that band reserved for, if you know?

A. Part of it is for code operation and part of it is for phone operation.

Q. What part of it is reserved for code operations?

A. Those frequencies between 3500 kilocycles and 3850 kilocycles.

Q. Will you explain to the jury what you mean by code operation?

A. It is international Morse, consisting of dots and dashes.

Q. Will you state what this unusual signal was that you heard? A It was voices.

Q. Will you state whether or not voices are authorized on that particular frequency?

(Testimony of Donald McPherson.)

A. They are not. [5]

Q. Over what period of time did you hear these voices?

A. For a period of approximately 20 or 25 minutes.

Q. Will you state what the voices were saying that you heard?

A. Yes. It was a repetition of the words, as I remember them, "One, two, three, four, testing for modulation. Can you hear me, can you hear me," repeated, and "Call a cab, call a cab," and there was one sentence that was uttered, "Call a cab and go to rendezvous No. 5."

Q. Will you state whether or not you made any notes on what you heard? A. I did.

Q. Do you have those notes with you?

A. I have.

(Notes marked Plaintiff's Exhibit 1 for identification.)

Q. Mr. McPherson, will you refer to what has been handed you, marked Plaintiff's Exhibit 1 for identification, and state whether or not that is the memorandum which you made at the time you were listening to these voices on the code band?

A. That is the notes I took at the time.

Q. Made in your handwriting? A. Yes, sir.

Q. In this particular band at this particular frequency [6] that you speak of where you heard these voices, were you communicating with anybody or was anybody communicating with you, or

(Testimony of Donald McPherson.)

were you listening to anything on that band at the time when you heard these voices?

A. On approximately that frequency, 3540 kilocycles, there was a group of amateurs that gathered there for the purpose of communications and the relay of messages within the working area of the station.

Q. At the time when you heard these voices, was anybody using that net? A. Yes, I was.

Q. Will you state whether or not these voices in any way interfered with that operation?

A. They did, very definitely.

* * *

Q. Will you state whether or not on this particular net there are any amateurs outside of the State of Oregon who use that net?

A. Yes, there is.

Q. Where are they located? [7]

A. There is one station in Kuna, Idaho, that reported in. There is another station in Oakland, California, that reported in.

Q. Will you state whether or not this jamming, as you speak of it, interfered with your receiving their signals? A. It did.

Q. Will you state whether or not you took any steps to notify anybody of this jamming?

A. I did.

Q. What, if any, steps did you take?

A. I originated a message to the Federal Communications Commission office in Portland, Oregon, relayed it through a station in Portland.

(Testimony of Donald McPherson.)

Q. Whose station was that that you relayed it through? A. Mr. Hart, W7COB.

Q. Did you make any written memorandum of the message as you sent it or before you set it or after you sent it?

A. I wrote the message out before I sent it.

Q. Do you have that message with you?

A. I do.

Q. As I understand it, that is the reverse side of what has been marked Plaintiff's Exhibit 1?

A. That's right.

Mr. Evans: May we have the reverse side of what has been marked Plaintiff's Exhibit 1 marked for [8] identification as Plaintiff's Exhibit 2?

(Message marked Plaintiff's Exhibit 2 for identification.)

Q. You have been handed what has been marked for identification as Plaintiff's Exhibit 2. I believe you previously identified that as a copy of the message which you transmitted to Mr. Hart, is that correct? A. This is the original message.

Q. Will you state whether or not you did transmit that message to Mr. Hart? A. I did.

Q. Will you state how you were able to transmit it to Mr. Hart?

A. Well, by moving off the frequency just a little bit, Mr. Hart was able to hear my signals. I advised him to clear the frequency and copy my message.

Q. And was that accomplished? A. It was.

Mr. Evans: I offer Plaintiff's Exhibit 1.

Mr. Pomeroy: That is objected to as incom-

(Testimony of Donald McPherson.)

petent, irrelevant and immaterial. He has testified to it, nothing connected with these defendants. It is self-serving.

The Court: Do you wish to make a statement now or later or at all, Mr. Evans? The Court will give you [9] whatever opportunity you wish in that connection.

Mr. Evans: I believe it has been testified to that these are the notes that this witness made at the time he heard the signal. It is offered for the purpose of showing that a signal was heard in interstate commerce, which is one of the elements of this offense, and only for that purpose. We can't put all our witnesses on at once, I realize. Later we will show that these defendants sent that signal, but right now the only purpose is to show that a signal was heard in interstate commerce on this particular band.

The Court: I think the Court should reserve ruling until there is some connection, some circumstance established tending to connect the defendants with this physical data which comprises Plaintiff's Exhibits 1 and 2.

Mr. Evans: Very well.

Mr. Pomeroy: If the Court please, there is another matter which I think is more important than that, and that is the fact this man has already orally testified to what he heard. Now, to supplement that with a self-serving group of notes, I don't think is proper evidence.

The Court: The Court has reserved ruling.

Mr. Pomeroy: Very well.

(Testimony of Donald McPherson.)

Mr. Evans: I will likewise offer Plaintiff's [10] Exhibit 2.

The Court: The same reservation is made with reference to that.

Mr. Pomeroy: Objection is made to the exhibit.

The Court: That objection will be considered later when it is offered again.

Q. Will you state whether or not you made any formal written communication to the Federal Communications Commission in regard to what you heard on the night of February 7, 1949?

A. I did.

(2-14-49 letter marked Plaintiff's Exhibit 3 for Identification.)

Q. You have been handed what has been marked for identification as Plaintiff's Exhibit 3. Will you state whether or not you can identify it?

A. I can.

Q. State what it is?

A. It is a letter that I wrote to the Federal Communications Commission office in Seattle, Washington, upon their request.

Q. State whether or not it deals with the jamming which you testified you heard on the air?

A. It does.

Mr. Pomeroy: I will object to that, if the Court please. It is an improper question, asking him what is [11] in an exhibit before it has been offered in evidence.

* * *

(Testimony of Donald McPherson.)

Q. Will you state whether or not you were able to identify more than one voice at the time you were listening to these voices on the radio?

A. I am of the opinion that there was two persons at the station at the time. [12]

* * *

Cross-Examination

By Mr. Pomeroy:

Q. How long did this broadcast continue that you listened to?

A. Oh, for approximately a period of 20 minutes that I heard.

Q. For 20 minutes, and they were saying, "Testing, testing, one, two, three, four", is that what you heard?

A. That's right, that was part of it.

Q. And they went on for how long, would you say? A. About 20 minutes, I would say.

Q. And it was on this particular dial, is that it, 3540 kilocycles, within five or ten kilocycles of that? A. That's right.

Q. In other words, your instrument is not calibrated to the extent that you could be exact?

A. The one I had at that time wasn't.

Q. That is the only time we are talking about, isn't it, at that time? We are not talking about any other time except the once, are we?

A. No, sir.

Q. You say a group of you used that particular part of the band? A. Yes.

(Testimony of Donald McPherson.)

Q. What group?

A. Comprised of amateurs all over the states of Oregon, Washington and California. [15]

* * *

EDWARD HART

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct-Examination

By Mr. Evans:

Mr. Pomeroy: If the Court please, at this time I move to strike all the testimony of the last witness, Mr. McPherson, and the jury should be instructed to disregard it, unless it is at a future time made competent by some further evidence. I wish the motion to be of record.

The Court: The Court will reserve ruling for later developments.

Q. Will you state your full name, please, and spell it for the reporter?

A. Edward H. H-a-r-t.

Q. In what city do you live?

A. Portland, Oregon.

Q. Will you state whether or not you have had any experience as a radio operator?

A. I have had four years on shipboard as a radio operator.

(Testimony of Edward Hart.)

Q. What years were those?

A. 1930 to '34. [19]

* * *

Q. Calling your attention to the night of February 7, 1949, will you state whether or not you were listening on your radio set?

A. Yes, sir, I was. [20]

* * *

Q. About what time of the day or night were you listening?

A. Between 7 and 9 p.m., roughly.

Q. Will you state whether or not you heard any unusual signals during that period of time?

A. I did, yes.

Q. State at what frequency you heard those unusual signals?

A. I had tuned down to the Oregon amateur net frequency of 3540 to talk to a few of the fellows before their time of 7:30 for net time approached, to talk to Mr. McPherson and the rest of the fellows, and the frequency was being jammed by voice transmission.

Q. You speak of talking to some of the other fellows. What do you mean by "talking to them?" Do you mean by voice, or some other means?

A. No, on that particular frequency, it is licensed only for code transmission, which is dots and dashes.

Q. Who reserves that band for that purpose, if you know?

(Testimony of Edward Hart.)

A. It is allocated to the amateurs of the United States by the Federal Communications Commission.

Q. What did you hear these voices saying?

A. The voice I heard was saying, "Testing, one, two, three, four," and it was repeating that over and over. I heard it approximately for ten minutes.

Q. Will you state what effect, if any, these voices had on the code operation at that frequency?

A. Well, ordinarily in receiving Mr. McPherson at my location, he is running approximately—he is using approximately 900 watts of power, and in terms of what us amateurs call "knocking the receiver off the table," he is really loud. This signal was completely jamming him.

* * *

Q. You have been handed what has been marked for identification as Plaintiff's Exhibit 2. Will you state whether or not that is the message which you received from Mr. McPherson? [22]

* * *

Q. State how accurately the instruments which you have can measure the frequency of the station which you are receiving?

A. Within one kilocycle or 1000 cycles.

Q. Will you state whether or not you ever made a written report of this jamming to any Federal Communications Commission office?

A. I sent a letter to the engineer in charge, Portland, Oregon, an affidavit to the effect of what

(Testimony of Edward Hart.)

I heard on that frequency and the time I heard it and the date. [23]

* * *

HERBERT ARLOWE

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct-Examination

By Mr. Dore: [26]

* * *

Q. Have you ever given an examination to any of these three defendants, either for an operators license or station license?

A. I don't believe we ever have; at least, they have never been issued any operators licenses.

Q. Where are the records kept concerning operators licenses and station licenses?

A. We have a copy of amateur station and operators licenses in our office.

Q. Is that a complete record and file?

A. It is complete for our district.

Q. Are those records in your office?

A. Yes, they are.

Q. Where is your office located?

A. In Rooms 801-810, Federal Office Building.

Q. Are you the custodian of those records?

A. I am in charge of the office, yes.

Q. You are familiar with those records?

A. Yes.

(Testimony of Herbert Arlowe.)

Q. Have you examined them?

A. Yes, we have.

Q. Have you examined them concerning Ralph Casey, Edward Plesa, and George LaClair in this case? A. Yes.

Q. Do you find in those records any license for any of these three men?

A. The records show that they do not have any operators or station licenses. [28]

* * *

Q. On or about that time, did you receive a complaint as to an unlicensed operator or unlicensed station in this area? A. My office did, yes.

Q. What was the nature of that complaint, if you know? [29]

* * *

A. The complaint was received from an amateur radio operator, Herbert Auckland, while he was driving down one of the avenues here in Seattle, he heard a voice transmission concerning——

Mr. Pomeroy: I object to this as being hearsay.

The Court: You cannot say what he heard. Say what he did.

The Witness: He reported that transmission.

* * *

The Witness: He reported this transmission to our office.

Q. And then what did you do?

A. We tuned on to that frequency.

Q. What frequency was that?

(Testimony of Herbert Arlowe.)

A. That was the frequency of 3936 kilocycles.

Q. On what date was that?

A. That was February 2. [30]

* * *

Q. What was that frequency again?

A. That frequency on that date was 3936 kilocycles.

Q. You say you then tuned in on this frequency? Did you have the necessary equipment there at your office or was it located elsewhere?

A. It was at the office.

Q. What type of equipment is that?

A. We have two types; one to use in the office, an ordinary receiver, and the other is a mobile direction finder, located in a car. [31]

* * *

Q. I will direct your attention to February 4 specifically and ask you if at that time you intercepted any signal or broadcast that was unusual?

A. Yes. [32]

Q. At what time of day?

A. I would say between 1 and 3 o'clock in the afternoon.

Q. And on what frequency?

A. 3540 kilocycles.

Q. What is the nature of that frequency?

A. The voice was testing, testing for modulation, and talking about racing information.

Q. More specifically, as to racing information, do you recall any other communication at that time?

(Testimony of Herbert Arlowe.)

A. In connection with the testing, the voice would give directions to Ralph and Eddie to call if they could hear the transmission.

Q. Was there anything peculiar about the characteristics of the transmitter, or the transmission?

A. Yes, very peculiar, because no call letters were transmitted, indicating that it was an unlicensed station.

* * *

Q. Did you hear any other such transmissions on that day?

A. That was the general trend of the transmission.

Q. Over what period did that last?

A. Approximately from 1 to 3 in the afternoon.

Q. 1 until 3. Was that on the code band?

A. Yes, that is in the code band. [33]

Q. You say that these were voices you heard?

A. Voices, yes.

The Court: I did not understand what the code band was in this connection.

The Witness: The code band is from 3500 to 3850 kilocycles.

Q. Directing your attention to your position there with the FCC, are you in charge of this investigation concerning this report?

A. Yes, I am in charge of it.

Q. Did you issue any instructions for investigation to other of your assistants at that time?

A. I did, yes.

Q. And what did you do by way of investiga-

(Testimony of Herbert Arlowe.)

tion at that time to endeavor to locate this allegedly illegal transmitter?

A. I assigned Mr. Ames in charge of the mobile unit. We call it the mobile unit, it is an automobile with a direction finding receiver to take bearings on the signal.

Q. What do you mean by the signal?

A. To take bearings on the signal issuing from this transmitter.

Q. And he was in charge of that. What type of automobile is it? A. It is a Plymouth sedan.

Q. What type of equipment does it carry? [34]

A. It carries a radio receiver capable of receiving on frequencies from 500 kilocycles to—well, there are several receivers, and the receiver that they used at that time would receive to about 36,000 kilocycles.

Q. From 500? A. From 500 to 36,000.

Q. You say that there was also a loop?

A. It is equipped with a loop antenna. The loop is capable of being moved; that is, rotated.

Q. What is the purpose of that?

A. When the loop receives a signal and the plane of the loop is toward the station, then the signal is loudest, and when the plane of the loop is crossways from the direction of the station, the signal is minimum, thereby indicating which direction the signal is coming from.

Q. What is this equipment used for?

A. For locating stations.

(Testimony of Herbert Arlowe.)

Q. Did you have any other equipment in this investigation?

A. The other equipment that we heard the signal over was located in the office. That was another receiver, another similar receiver.

Q. Does it have a loop device?

A. No, it doesn't.

Q. Is this loop device what is commonly known as a radio direction finder? [35]

A. That is right.

Q. Such as they use on ships and yachts?

A. Very similar to what they use on ships. You can get more than one bearing by moving the car while the signal is on the air.

Q. Concerning this specific investigation, what occurred and what was done by way of investigation on February 5, 1949?

A. I assigned Mr. Hallock and Mr. Ames on the mobile unit, the car, and Mr. Dietsch to go aboard a Coast Guard cutter and proceed outside of the boundaries of the State of Washington, namely, in Puget Sound, to listen for the signal at the same time. [36]

* * *

Q. What had you yourself done that day concering the investigation?

A. I remained in the office and listened to the signal coming over the office receiver.

Q. What time of the day or night was that?

A. That was in the afternoon of February 5,

(Testimony of Herbert Arlowe.)

approximately the same time, from 1 until 3. Some days it would vary a little bit.

Q. 1 to 3? A. Yes.

Q. And you listened to that over the duration of the period of 1 to 3 that day?

A. That's right.

Q. Did you listen at any other time during that day?

A. Not that I recall. We may have listened a shorter and longer time; that is, starting in at noon and listening to a later period, but we didn't hear any signals outside of approximately that period.

Q. Would you describe those signals that you heard on that afternoon of February 5 between the hours of 1 to 3?

A. As I recall, on that day it was, "Testing, one, two, [37] three, four, testing for modulation," and the voice mentioned names of—names like we later determined were the names of horses running in a race, also mentioned the number in connection with the name. For instances, he might say on that day, "Manzanito, No. 6."

Q. Any other such horses names that you recall?

A. I think there was one by the name of War Again, or Warpath, something like that.

Q. Do you recall any other language in the communication?

A. During the test, the person talking over the radio-telephone would ask Casey or Eddie or Ralph whether he could hear the signal.

(Testimony of Herbert Arlowe.)

Q. Was there any response by any other voice in these transmissions?

A. We heard no other communication in return, no.

Q. Were any other persons' names used in the communication?

A. One day the name Joe was mentioned, but I can't remember which day that was.

Q. You say that you had this other equipment there and the reports of the investigation by Ames and Hallock. Did they that day report to you that they had made any location as to the possible place of these broadcasts?

A. The bearings that they reported to me indicated that the signal was in the neighborhood of First and Spring, First [38] Avenue and Spring Street.

Q. Do you know what structure is in that area?

A. The Arlington Hotel is at that location.

Q. From the reports made to you, were they any facts showing whether the equipment was located down low or high up?

A. No indication that day whether it was low or high.

Q. Were these calls on the 3540 band on that day between 1 and 3? A. Yes, they were.

Q. Were there any other voices on that band that day?

A. Sometimes the voice would be different than the other times. One person had a characteristic in

(Testimony of Herbert Arlowe.)

his speech that didn't show up in the speech of the other person.

Q. Do you personally know whether these communications were recorded on that day?

A. Yes, the communications were recorded every day. [39]

* * *

Q. You say that you sent Mr. Dietsch, and who was the other man?

A. Mr. Dietsch was sent by me to board a Coast Guard cutter and proceed out in the waters of Puget Sound.

Q. You said that he reported back he had done that? A. He did that. [41]

Q. Yesterday you testified concerning the dates of February 4, 1949, and February 5, 1949, concerning your investigation of this case. I will now direct your attention to February 6, 1949, and ask you if any investigation of the case was made on that date? A. No, it wasn't.

Q. Why was that?

A. The office was closed, and we understood that there would be no races, so we expected no transmissions.

Q. Directing your attention to February 7, 1949, were [43] you in charge of the investigation of this case on that date? A. I was.

Q. And who was working with you on the 7th?

A. Mr. Ames and Mr. Hallock were assigned to the mobile unit, and Mr. Watson was assigned to record all transmissions received in the office.

(Testimony of Herbert Arlowe.)

Q. What did you proceed to do in the way of investigation on that date?

A. I heard the transmissions from this unlicensed station.

Q. At what time of the day or night was that?

A. As I remember, it was 12:26 in the afternoon, right after noon.

Q. Where were you at this time?

A. I was in the office where the receiver was located.

Q. What did you hear at that time?

A. I heard the usual test procedure, "One, two, three, four, testing for modulation," and directions to Ralph and Edward and also Casey was mentioned, and for them to——

Q. Do you recall any of that language used on that broadcast at that time?

A. At that time from 12:30 until 1 the test included a direction for Ralph and Edward to go to Franco's Cafe.

Q. Do you recall any other language used?

A. At 2, from 2 till 2:14, as I recall, this voice directed Edward to raise his hand, and also, "Plesa, please raise your hand," also, "Ralph, raise your hand if you hear me," also, "Edward, cross the street even though you are crossing against the red light," also, for Casey to do a little dance.

Q. You were at your office during that time?

A. I was.

Q. What were the characteristics of that signal

(Testimony of Herbert Arlowe.)

or communication or transmission on that day when you heard it?

A. It was a voice transmission, part of it being, "Testing for modulation, do you hear me, do you hear me, raise your hand if you hear me."

Q. Was there any identification of a station?

A. No identification.

Q. Concerning the identification procedure, was there any standard identification used?

A. No call letters signed or no other identification that is regularly licensed.

Q. Do you know whether there was any interference with interstate communication that day, to your knowledge?

A. I do know that there was interstate communication in the evening of that day.

Q. Did you hear that broadcast?

A. I did not hear it, Mr. Hallock heard it.

Q. What else did you do on the afternoon of the 7th? [45]

A. Shortly after I heard this direction for Ralph and Edward to go to Franco's Cafe, and after I looked up to find where Franco's Cafe was located, I walked on the street, on First Avenue, and I observed a person with a light brown overcoat with a hearing aid receiver in his ear standing on the corner of First and Spring.

* * * *

Q. Was there anything peculiar about that?

A. We were looking for a man with a hearing

(Testimony of Herbert Arlowe.)

aid, that is why I noticed it. I noticed also that there were extra wires showing. From the front of his coat where his coat was hanging open, there were extra wires that you would normally not see.

Q. Where did you see this man?

A. The corner of First and Spring.

Q. Can you identify that person you saw here in the courtroom today? A. I can, yes.

Q. Would you point him out to the Court and jury, please?

A. He is sitting beside Mr. Pomeroy, Ralph Casey.

Q. Did you speak to him at that time?

A. No.

Q. What was he doing when you saw him?

A. He was just standing looking around. He had one hand in his left coat pocket. While I observed him, the man that I now recognize as Eddie Piesa approached him. They stood and talked together for a few minutes and then proceeded up [47] First Avenue.

Q. That was in the City of Seattle?

A. Yes.

Q. It was located at First and Spring, you say?

A. That's right.

Q. Are there any hotels immediately adjacent to that location that you observed?

A. The Arlington Hotel is across Spring Street.

Q. By way of your investigation, were you able to locate the place of transmission on that date?

(Testimony of Herbert Arlowe.)

A. We were able to locate it, yes. The mobile unit located the source of transmissions.

Q. As where?

A. The indication was the Benjamin Franklin Hotel.

Q. What band was the transmission or broadcast operated on that day?

A. It was within the band 3500 to 3850; specifically on 3536 kilocycles, very approximately.

Q. Were you able to identify any of the voices on the signals that day?

A. The voice that day was the same as the voice had been for the majority of the time. [48]

* * *

Q. I will direct your attention to February 8, 1949, and ask if any investigation was made during that day.

A. We were alerted to investigate, but we heard no signals.

Q. Directing your attention to February 9, 1949, did you make an investigation at that time?

A. We did.

Q. Who worked with you on that day?

A. The same persons, Hallock and Ames, on the mobile unit. Also, Mr. Wood drove the car for me on another unit to work with the mobile unit for a part of the period on the 9th.

Q. What did you personally do by way of investigation on the date of February 9?

A. I heard the signal come on again shortly after 1 o'clock, I think it was about 1:15.

(Testimony of Herbert Arlowe.)

The Court: Repeat the date, please.

The Witness: The 9th, February 9.

Q. During the day or evening?

A. Afternoon. [49]

The Court: What year?

The Witness: 1949.

Q. What did you hear at that time?

A. I heard the usual procedure of testing for modulation, and directions to raise—for Ralph and Eddie to raise their hand if they were able to hear the signal, also that day, to indicate if the signal was any better than it was the preceding day.

Q. Over what period of time did this transmission occur?

A. It was a very short transmission that day. I think it ended about 1:45.

Q. Do you remember any specific language used on that day in that communication?

A. Yes. They mentioned that the horses were at the post, now running, now running, and then he would give a number of the winning horse. He did that three times.

Q. Do you remember any of the horses on that day mentioned?

A. He gave no name. He only gave a number.

Q. Do you remember any of the numbers as of that day?

A. I can't be specific which numbers were given that day. Always the numbers were low numbers, though, 3, 6, 9, numbers like that.

(Testimony of Herbert Arlowe.)

Q. What else did you do by way of investigation that day?

A. I was in another mobile unit that was equipped with [50] a receiver to indicate signal strength. When I drove by—when Mr. Wood drove the car that I was using by the Benjamin Franklin Hotel, the meter in this receiver indicated maximum strength, indicating that we were as close as we could get to the signal on the street.

Q. Then what did you do?

A. I listened further, and the signal did not come back on again.

Q. About what time of day was that?

A. About 1:45.

Q. Then what occurred after that?

A. Nothing further that day. The other mobile unit found the same result, but Mr. Ames will relate that.

Q. What were the characteristics of the signal on that day?

A. The same as before, a voice transmission, testing for modulation. One slight difference was that the transmissions were shorter.

Mr. Pomeroy: What date is this we are talking about?

Mr. Dore: February 9.

Mr. Pomeroy: 1:15?

The Witness: 1:15 to 1:45.

Q. Are you aware from your knowledge of any jamming or the interception of any interstate communication on that day? [51]

(Testimony of Herbert Arlowe.)

A. No, I am not.

Q. Were you able to identify the voice?

A. The voice sounded the same on that day as it did the previous day, that is the voice that was on the majority of the time, as I remember.

Q. All of these tests were made in the limits of the City of Seattle on that day? A. Yes.

Q. I will now direct your attention to February 10, 1949. Were you in charge of the investigation of this case on that day? A. I was.

Q. Who was working with you on that day?

A. The same personnel, Hallock and Ames on the mobile unit, Watson to record. I left the office shortly after the transmissions were heard and went with Mr. Wood.

Q. About what time of day was that?

A. The transmissions started at 12:26, and as soon as I heard them, I proceeded immediately to the vicinity of the Benjamin Franklin Hotel.

Q. And then what happened?

A. After I determined that to my own satisfaction and received word confirming this from Mr. Ames, we proceeded to enter the hotel.

Q. By what method did you confirm these facts, or this [52] suspicion, to your own satisfaction?

A. That the signal received on the receiver was strongest in the vicinity of the hotel.

Q. Were you in the direction finder car that day?

(Testimony of Herbert Arlowe.)

A. I was not. That was Mr. Ames that had the direction finder.

Q. What type of equipment did you have in your car?

A. I had an ordinary receiver with a meter that indicated the relative strength of the signal.

Q. Is that a standard method used by the Federal Communications Commission to determine strength?

A. That is the auxiliary method.

Q. How does that work? You might explain to the Court and jury just how that method works.

A. A radio signal emanating from an antenna is strongest right at the antenna. Then as you proceed away from the antenna in all directions the signal gets weaker and weaker until at some distance away from the antenna it will become so weak that the average receiver won't be able to receive it. So going on this method we have a meter in the receiver that indicates the relative signal strength received in the receiver, so as you approach the antenna, this meter indicates a stronger and stronger signal, so that if you made concentric circles around the antenna, you would have the same signal strength, but as you made a smaller circle, the [53] strength would go up.

Q. After you determined that, what other facts led you to believe that the apparatus of transmission was located in the Benjamin Franklin Hotel?

A. A report received from Mr. Ames that the bearings crossed on the Benjamin Franklin.

(Testimony of Herbert Arlowe.)

Q. After receiving that report, and taking into consideration your own findings, what did you do?

A. We proceeded into the hotel. I accompanied Mr. Ames to the various floors of the hotel.

Q. This is the Benjamin Franklin Hotel?

A. The Benjamin Franklin Hotel. We proceeded to the various floors of the hotel until he reported to me that the strongest signal was in or near Room 1217. [54]

* * * *

Q. So this might be clear to the Court and jury and to myself, would you start back at the time you entered the Benjamin Franklin Hotel? You said "we entered the Benjamin Franklin Hotel." Who do you mean by "we"?

A. I mean Mr. Ames and myself and Mr. Hallock.

Q. What equipment did you have at that time?

A. I had no equipment on my person.

Q. What equipment did the other men have?

A. Mr. Ames had a very small receiver equipped with earphone and a meter.

Q. What type of receiver was that?

A. It was a radio receiver tuned to this frequency, 3536 kilocycles.

Q. Did the other gentleman have any radio equipment or detection equipment with him?

A. No.

Q. Did you supervise these men in their procedure through the hotel? A. I did.

(Testimony of Herbert Arlowe.)

Q. What were your orders?

A. To proceed to the various floors of the hotel to determine what location the strongest signal was received.

Q. Do you know from your own personal knowledge what [55] location that was? A. I do.

Q. Where was that?

A. I walked beside Mr. Ames and heard the signal emanating through the door of Room 1217. I heard the voice.

Q. What do you mean, emanating through the door?

A. I heard the voice coming through the little peekhole in the door.

Q. What do you mean by a peekhole in the door?

A. Those doors are equipped with a very small grillework and a little shutter inside, so that the person inside can open the shutter and see who is at the door.

Q. Was the shutter open or closed at that time?

A. It was closed.

Q. How did you happen to listen at that door?

A. For the reason that Mr. Ames advised me that that was the location of the strongest signal.

Q. Were you with Mr. Ames at that time?

A. I was.

Q. You were beside him at that time?

A. That's right.

Q. And he had this receiver equipment?

(Testimony of Herbert Arlowe.)

A. Yes.

Q. Commonly called a squawker box?

A. No, we haven't any name for it. It is a very small [56] portable receiver.

Q. Did you hear what was coming out of the receiver? A. No.

Q. You couldn't hear what was coming out of the receiver? A. No.

Q. Why was that?

A. Because the phone of the receiver was in Mr. Ames' ear.

Q. Directly prior to that, had you seen any of these men in the hotel?

A. I hadn't personally, no.

Q. What did you hear coming through the little slot in the door?

A. I heard the voice that sounded like the same —which sounded like the voice we had heard over the radio, "testing, one, two, three, four, testing for modulation."

Q. What time of day was that?

A. 1:46 in the afternoon.

Q. Was anybody else with you besides Mr. Ames at the door? A. No.

Q. What did you do then?

A. There is one other thing I would like to relate first.

Q. What is that?

A. And that is that long distance telephone calls had been coming to Room 1217. I had asked the

(Testimony of Herbert Arlowe.)

operator, Miss [57] Donnelly, prior to this to indicate which room these periodic long distance telephone calls were coming to. She advised me before we went upstairs that they were coming to 1217.

* * *

Q. I will ask you, did you advise the telephone operator in the Benjamin Franklin Hotel to keep track of these calls coming to a certain room?

A. I did.

Q. Did she report to you concerning that?

A. She did.

Q. Pursuant to that report, what did you do?

A. I proceeded to Room 1217.

Q. After you heard this voice at the door, what did you do?

A. I returned to the lobby of the hotel to determine who was registered to be in that room.

Q. Did you find out who was registered there?

A. I did, from the hotel records.

Q. Who was registered in that room?

A. George LaClair, Eddie Plesa and Ralph Casey.

Q. What did you do then?

A. I left immediately to come to the United States Commissioner's Office to present a complaint.

Q. Did you do that? A. I did.

Q. What else occurred? [59]

A. There was some delay.

Q. Just tell us what happened in your own words.

(Testimony of Herbert Arlowe.)

A. At approximately 1:50, I left the hotel, came immediately to the United States Court House building, with the assistance of the United States Attorney made up a complaint, took it to the Commissioner's office, but he wasn't in. I had to wait over half an hour for him to reappear at his office. When he did, he made out the warrants for arrest of these three persons. I proceeded then to the Marshal's office and waited for a marshal to return for a few minutes. Then Marshal Scully went with me to serve these warrants on these three men.

Q. When did you return to the hotel?

A. I would say it was about 3:20 in the afternoon of the 10th.

Q. Having returned to the hotel about that time, what did you and Mr. Scully do?

A. Proceeded immediately to Room 1217.

Q. Tell the Court and jury what occurred at that time.

A. Mr. Scully knocked on the door of 1217, and Eddie Plesa opened the door, and he introduced himself and called for Ralph Casey. Ralph Casey came forward and he served the warrant. He then served the warrant on Eddie Plesa. Then he asked for C. LaClair. The warrant erroneously indicated C. LaClair, because he was registered in the hotel that way. [60] Mr. LaClair did not immediately come forward. Mr. Scully says, "Well, I must take you all to the station if Mr. LaClair does not answer." Then Mr. LaClair came forward and said, "My name is George LaClair."

Q. Do you see that man here today?

A. Yes, I do.

Q. Will you point him out to the Court and jury, please?

A. He is sitting to the left and slightly behind Attorney Pomeroy.

Q. Is it this man here at my right?

A. That is Edward Plesa.

Q. Which man do you mean?

A. George LaClair is the one behind, slightly to the left and behind Attorney Pomeroy.

Q. Would you stand up, please? Is that the man? A. That is George LaClair.

Q. Looking at these three men seated here near Mr. Pomeroy, are those the three men that were in the room? A. They are.

Q. Are they the three men who identified themselves? A. They are.

Q. How long were you in the room?

A. I would say approximately ten minutes.

Q. Did you see anybody else in the room at that time? A. I did. [61]

Q. Who was there?

A. One Joseph Donofrio, also a man who said his name was Brandenberg.

Q. Anybody else in the room?

A. I can't recall that there was anyone, or if there was anyone else, I didn't get his name.

* * *

Q. You say that you looked around the room?

A. Yes.

(Testimony of Herbert Arlowe.)

Q. Did you find any radio equipment at that time? [62] A. No.

Q. Did you later find any radio equipment in that room? A. I did.

Q. In that room?

A. No, not in the room.

Q. Just tell what occurred after you looked around the room.

A. I proceeded from the room, after the arrest, to the Motor Ramp Garage.

Q. In the meantime, what had Mr. Scully done? Where were the defendants?

A. They were in the room for approximately ten minutes. Then he Mr. Scully——

Q. Were they there during the time you were looking through the room? A. They were.

Q. After the period of ten minutes, were they taken from the room? A. They were.

Q. What did you do after that?

A. I accompanied them to the lobby and then I proceeded to the Motor Ramp Garage.

Q. By "them," who do you mean?

A. Marshal Scully and the three defendants.

Q. Was anybody else with them at that time?

A. Mr. Donofrio was with them.

* * *

Q. After you went downstairs with the men, what occurred then?

A. I left Marshal Scully and proceeded to the Motor Ramp Garage.

(Testimony of Herbert Arlowe.)

Q. Why did you go there?

A. I had received advice that the equipment was in LaClair's car.

Q. Did you proceed to the garage?

A. I did. [64]

Q. About how long did it take you to go from the hotel to the garage?

A. Approximately one or two minutes.

Q. Where is this garage located?

A. It is on Sixth, right off of Westlake.

Q. How far would you say it is from the hotel?

A. It is right around the corner.

Q. Could you judge it in feet or by blocks?

A. It would be two short blocks, it would be right around the corner.

Q. Are there any landmarks adjacent to it that might give a better picture to the jury?

A. It is around the corner from the Orpheum Theater.

Q. And you say it took you about two minutes to get there? Who was with you?

A. Mr. Ames.

Q. Just tell what happened.

A. We found Mr. Hallock standing beside a 1948 Packard car.

Q. Where was the car located?

A. It was in the basement of the Motor Ramp Garage.

Q. Go ahead.

A. I asked if the equipment was in the car.

(Testimony of Herbert Arlowe.)

Mr. Ames said it was. I asked that the car be opened, and it was opened by the garage attendant.

Q. What part of the car was opened? [65]

A. The rear compartment of the car.

Q. Did he open it with a key or did he open it manually? A. He opened it with a key.

Q. Go ahead with your story.

A. We found in it two pieces of baggage. One was a rather large, square piece of luggage they ordinarily term a hatbox, a combination hatbox, shoe box.

Q. What else was in there?

A. A small zipper bag, kind of reddish-brown color.

Q. Did you open these bags?

A. We removed them from the car and opened them, yes.

Q. What did you find therein?

A. In the large box, we found a radio transmitter and power supply and microphone, and in the small bag, we found a receiver and wires, soldering iron, various other radio equipment including a hearing aid earphone.

(Zipper bag marked Plaintiff's Exhibit 5 for Identification.)

(Hat box-shoe box marked Plaintiff's Exhibit 6 for Identification.) [66]

* * *

Mr. Dore: I will offer Plaintiff's Exhibits 5 and 6 in evidence, Your Honor.

(Testimony of Herbert Arlowe.)

Mr. Pomeroy: If the Court please, there will be objection to it on the ground previously mentioned, affidavits of which are on file. Also, there will be testimony directed toward this search and seizure. [69]

* * *

Q. Directing your attention to Plaintiff's Exhibit 6, the big shoe-hat box, could you identify for the Court and jury what is contained therein?

A. I can.

Q. What is in that bag?

A. This is a Harvey radio transmitter, model TVS 50, it states right here. It is capable of use on a range of frequencies from 3.5, or 3500, I should say, 3500 kilocycles to 148,000 kilocycles.

Q. Is there any range strength of that type of transmitter?

A. This has a power normally of about 30 watts input, depending upon the power supply used with it.

Q. Is that commonly known to your trade as a long or short distance transmitter?

A. It would be a long distance transmitter for night use, and a short distance, that is, up to 50 or 100 miles, for day use on the frequency 3536.

Q. Is there any possibility of greater distance being reached by a transmitter of that type through any type of transmission?

A. Depending upon the time of day. If it is at night, it [74] will reach a very great distance, almost

(Testimony of Herbert Arlowe.)

unlimited. It could be heard for two or three thousand miles.

Q. Why is there a difference during the day?

A. In the daytime, the signal does not reflect from the upper atmosphere, called the ionosphere. It is approximately 12 miles above the earth. In the nighttime, this ionosphere becomes more concentrated and will reflect the signal back to the earth at a greater distance.

Q. What is meant by a skip transmission?

A. That is the term ordinarily applied to the fact that the ground signal, the one that is radiated primarily and not reflected, is received for a certain distance, maybe 100 miles. The skip signal is the one that is reflected back from the upper atmosphere and may be received at a greater distance. [75]

* * *

Q. I might ask if the witness knows the setting of that crystal?

A. Yes. The crystal that is in the transmitter is marked 3535.6.

Q. What is the meaning of that?

A. That means that it is 3535.6 of a kilocycle.

Q. On what band did you say this transmitter broadcast?

A. The frequency heard as we measured it measured approximately 3536 kilocycles.

Q. Was that receiver set for the same, if you know?

A. I can't say positively, because it is fixed,

(Testimony of Herbert Arlowe.)

tuned with no calibration. We have not changed the tuning of it.

Q. That is a homemade receiver, you say?

A. That's right.

Mr. Dore: I again offer Plaintiff's Exhibits 5 and 6 in evidence.

The Court: The defendants request, as I understand it, [78] to examine the witness on the voir dire concerning this offer?

Mr. Pomeroy: Yes, Your Honor, and in addition, we might as well make an offer of proof on it and get the whole thing before Your Honor at the one time. I might suggest we make the offer of proof in the absence of the jury.

The Court: The Court grants to the defendants the opportunity of inquiring in respect to any legitimate voir dire examination. Any questions you may wish to ask of this witness concerning the proper admissibility of these exhibits may be indulged, but so far as cross-examination of the witness, unless the examination has been finished, the Court will reserve to the defendants that right for later enjoyment.

* * *

Voir Dire Examination

Q. (By Mr. Royce) When did you first hear that these defendants were in any way connected with an automobile at the Motor Ramp Garage?

A. When I was in the lobby of the Benjamin Franklin Hotel at approximately 3—well, it was

(Testimony of Herbert Arlowe.)

right after the arrest, 3:35 or something like that.

Q. And who gave you that information?

A. The information came to me from my office.

Q. From whom in your office?

A. From Mr. Wiltse, regional manager.

Q. What action did you take in regard to that information?

A. I proceeded immediately to the Motor Ramp Garage.

Q. Who was with you at the time you received this information regarding the car?

A. There was no one with me at the time, but immediately thereafter Mr. Ames joined me and he verified that the equipment was in the Motor Ramp Garage in a Packard '48 car.

Q. And as I recall your testimony, you testified that you and Mr. Ames then went to the Motor Ramp Garage? A. That is right.

Q. And you also testified, did you not, that Mr. Hallock was by that automobile there?

A. Yes.

Q. Who is Mr. Hallock?

A. He is an employee in my office. [80]

Q. And were there any police officers there at that time?

A. I think there were. They were more or less in the background. They weren't close to the car or hadn't opened the car.

Q. Was Mr. Donofrio there at that time?

A. I think he was when I joined them, if he

(Testimony of Herbert Arlowe.)

didn't, he came immediately afterward. It was either just before or just after. I can't remember whether he came in just before or after I did.

Q. Did you observe a piece of paper on the windshield of the car? A. No, I didn't.

Q. Or any note or sticker?

A. I observed the owner's identification.

Q. On the outside of the car, I mean?

A. I didn't observe any paper on the outside of the car.

Q. What happened when Mr. Donofrio came up?

A. As I remember it, he said that he had been sent to remove the car.

Q. Did you arrest him? A. Oh, no.

Q. Did anybody arrest him? A. No.

Q. Did the police officers arrest him?

A. No. [81]

* * *

Q. Was the trunk of the car locked or unlocked when you arrived there?

A. When I arrived there, it was locked.

Q. Who unlocked the trunk?

A. As I remember it, it was the garage attendant, Mr. Walker.

Q. A Mr. Walker?

A. It was either Mr. Walker or Mr. Turner, I can't say. They were both there at different times. I can't say now, they will have to testify as to that.

Q. Did he open the trunk at your request?

A. That's right.

(Testimony of Herbert Arlowe.)

Q. How did Mr. Ames know that this material was in the trunk of this car? [82]

A. He told me he had previously seen it there.

Q. Do you know how he got into the trunk?

A. No, I don't.

Q. Is Mr. Ames present in the courtroom?

A. He is.

Q. Will he be a witness in this case?

A. He will.

Q. Which one of the gentlemen is Mr. Ames?

A. (Indicating).

Q. Were these bags open or closed when you saw them in the car?

A. When they were in the car, they were closed.

Q. Directing your attention to the original file which has just been handed to you, opened at the affidavit purporting to be your affidavit executed sometime in August in this cause, I will ask you if that is your signature?

A. The top signature is mine.

Q. Is that your affidavit, Mr. Arlowe?

A. Yes.

Q. Directing your attention to the last paragraph on page 2 of the affidavit and directing your attention to the next to the last sentence, "Mr. Standard, the assistant manager of the hotel, had held the garage claim stub as a security for the payment owed by Casey and the others on the room because a big bill had been run up." Is that your sworn [83] statement?

A. That is what I understood to be the facts.

(Testimony of Herbert Arlowe.)

Q. Where did you get the information?

A. From Mr. Hallock and from Mr. Standard.

Q. From Mr. Hallock and Mr. Standard?

A. Yes.

Q. This is some more hearsay, then?

A. It wasn't hearsay at that time, they were not in court.

Q. You don't know whether it was true or not that Mr. Standard was holding this stub?

A. That is the only way that Mr. Hallock could find out where the car was, was by Mr. Standard's information.

Q. So you got the information from Mr. Hallock?

A. I beg your pardon?

Q. You got the information from Mr. Hallock?

A. I got the information?

Q. Is that where you got it?

A. That was one place I received the information, yes.

Q. When did Mr. Hallock give you this information? A. After I arrived at the car. [84]

* * *

Q. What members of your office were present at the Motor Ramp Garage?

A. Mr. Hallock was standing by the car when I arrived and Mr. Ames accompanied me.

Q. Were Mr. Hallock and Mr. Ames acting under your instructions and directions?

A. They were.

(Testimony of Herbert Arlowe.)

Q. In being at this garage? A. Yes.

Q. And opening the trunk of the car? [85]

A. The attendant opened the trunk.

Q. At whose direction? A. Mine.

Q. I mean prior to this time, the time Mr. Ames opened the trunk?

A. I knew nothing about Mr. Ames opening the trunk the first time. That will be his testimony. He was acting in the investigation.

Q. Is Mr. Hallock present in the courtroom?

A. He is not present right now.

Q. Will he be a witness in the case?

A. He will. [86]

* * *

Q. A few minutes ago, Mr. Royce asked you if you had observed any sticker on a windshield of that Packard automobile and you answered "No", and answered, I believe, that you had seen an owner's certificate in the car? A. I had, yes.

Q. Where was that certificate?

A. It was in the glove compartment.

Q. Did you observe whose name was on that certificate? A. The name was George LaClair.

Q. I don't quite understand how you knew that the car was in the garage there.

A. The first word that I received was from my office.

Q. When was that?

A. That was immediately prior to my leaving the hotel, I would say at 3:35.

(Testimony of Herbert Arlowe.)

Q. Leaving what hotel? [88]

A. The Benjamin Franklin Hotel.

Q. Was that before or after the arrest?

A. That was after the arrest.

Q. Why did you call the office?

A. I called the office to find out what had developed while I was at the Marshal's office.

Q. What was the interval of time, would you say, between the time you left the hotel to secure the warrant to the time you got over here to the Marshal's office?

A. I left the hotel at approximately 1:50 the first time. I left the hotel the first time to get the warrant. I proceeded to the United States Attorney's office.

Q. You arrived here about what time?

A. I can't say exactly, probably ten minutes later.

Q. How long did you remain in this building?

A. Until 3:10, 10 minutes after 3.

Q. That was 1:50 to 3:10?

A. 1:50 to 3:10.

Q. And then when did you leave this building?

A. At 3:10.

Q. Where did you proceed?

A. With Deputy Scully to Hotel Benjamin Franklin.

Q. You say that you phoned your office after you returned to the hotel? A. That's right. [89]

(Testimony of Herbert Arlowe.)

Q. And after the arrest? What message did you receive from your office?

A. I received the message that the defendants had moved two pieces of luggage out of their room and that it had been taken to the Motor Ramp Garage.

Q. Is that the reason you proceeded to the Motor Ramp Garage? A. That is the reason.

Q. When Mr. Royce questioned you, you said that you also had gotten some information concerning that from somebody else in the hotel. Who was that?

A. I didn't receive that directly. That was given to my office.

Q. That was given to you?

A. That was from Mr. Standard.

Q. And that was the same message?

A. That was the same message.

Q. As you received from your office when you called? A. That's right.

Q. And the interval of time that elapsed from the time you left the hotel to the time you returned to the Benjamin Franklin Hotel, as I understand it, was 1:50 p.m. to what time?

A. I would say about 3:20.

Q. In other words, there was approximately an interval of about one hour and thirty minutes, is that correct [90]

A. 1:50 until 2, 2 to 3:20, it would be an hour and 40 minutes. An hour and 30 minutes, I believe.

(Testimony of Herbert Arlowe.)

Q. That is an approximation?

A. That is an approximation, yes.

Q. Did you say when Mr. Royce questioned you that you saw Mr. Donofrio at the garage?

A. I did, yes.

Q. What time of the day was that that you saw him there?

A. I would say approximately 3:40.

Q. Did I understand that you previously testified that Mr. Donofrio was in the room?

A. He was, yes.

Q. When? A. At the time of the arrest.

Q. Did you call the city police?

A. I did not.

Q. Were the police there at the garage when you arrived there?

A. As I remember it, there were two policemen in the garage, yes.

Q. Did the police remove any of this luggage from the car? A. They did not.

Q. Who did remove the luggage?

A. Mr. Ames took the luggage out of the back compartment. [91]

* * *

Q. Did you ever make a test or order a test of this transmitter to be made? A. I did.

Q. What was the purpose of that test?

A. To determine whether it was operating on the frequency of the signal that we heard prior to that.

* * *

(Testimony of Herbert Arlowe.)

Q. What was the frequency?

A. The accurate measurement was 3535.8 kilocycles.

Q. Was that the same measurement of the signals that you had been hearing?

A. Our previous measurements had been by a portable meter, which is not so accurate. It indicated 3536, accuracy, approximately one-half kilocycle.

Q. One-half of a kilocycle?

A. Approximately.

Q. In your opinion, based upon your tests, this was the same transmitter as used in the emission of those signals? [92]

A. Absolutely, it was the same transmitter.

* * *

Q. Was there any equipment for transmitting code in this equipment that you seized?

A. There is no provision for transmitting code. There is no radio telegraph key, which would be necessary to transmit a code. [93]

* * *

Cross-Examination

By Mr. Pomeroy:

Q. I mean, you have boards and commissions and hearings in regard to Federal Communications matters, do you not?

A. I have not. Did you say I have attended them?

Q. Have you? A. No, I never have.

Q. You presented a number of cases for prosecu-

(Testimony of Herbert Arlowe.)

tion, have you not, to the United States Attorney's office?

A. One in this district, one in San Francisco.

Q. Is that the only one you ever presented here?

A. That's right. [96]

* * *

Mr. Royce: Yes, Your Honor. I would like to state to the Court that my objection to the evidence offered as to the records—at this time, we are also making a motion to strike all the oral testimony previously testified to by Mr. Arlowe and the other previous witnesses as to any broadcasts made by these defendants. The objection to the introduction of Plaintiff's Exhibit 7 and the motion to strike the previous testimony is based on Title 47, USCA, Sec. 605, and on the decided case of Nardone vs. U. S., 302 U. S. 379. [102]

* * *

Q. Mr. Arlowe, at or about the time that you allege these defendants were broadcasting over a frequency of approximately 3540 kilocycles, did your office have complaints of other broadcasting on other wave lengths, illegal broadcasting?

A. I think that is entirely beside the point because——

Mr. Pomeroy: If Your Honor please, I am asking that this witness——

The Court: That objection is sustained. The jury will disregard the witness' response. It is for the Court to determine whether it is beside the point or not. A. No.

(Testimony of Herbert Arlowe.)

Q. You had no complaints of any other illegal broadcasting in this area, is that right?

A. We had no complaint that we were receiving at the time we were receiving these.

Q. Did you have any at approximately the same time? A. We had some prior to this time.

Q. How much prior?

A. About January 25, I would say.

Q. January 25 you had complaints of illegal broadcasting in this area, is that correct? [116]

A. No, in Everett.

Q. How many kilocycles was the band on which that broadcast was being made?

A. We never received any indication of the frequency that was on.

Q. You couldn't find that?

A. We never heard them.

Q. You never heard them? A. No.

Q. On February 2, didn't you testify in direct examination that you had a complaint on a broadcast over 3936?

A. We received that complaint, yes.

Q. Is that different than the January 25 complaints? A. Yes.

Q. What other complaints have you had? Over what other spots on this band did you have complaints at approximately this time?

A. No other.

Q. Referring back to my previous question, did you ever find out who had done the broadcasting from Everett? A. No.

(Testimony of Herbert Arlowe.)

Q. Did you make an investigation?

A. We started an investigation. [117]

* * *

Q. In Everett? A. Yes.

Q. Was that transmitter similar to this transmitter which you have identified as being in Plaintiff's Exhibit 6?

A. I did not see that transmitter.

Q. Did you get a description of it?

A. We got a description.

Q. Does that description make it appear to you to be similar to this transmitter which you have identified in Plaintiff's Exhibit 6?

A. It would not be similar. [118]

* * *

Q. You say that you heard more than one person speaking over whatever radio you were listening to? A. Yes.

Q. How many voices did you hear, different voices?

A. I would say two different voices.

Q. And as I recall, you said one had a peculiarity in speech? A. Yes.

Q. Describe what you mean by that.

A. In pronouncing the word "modulation," this one voice [120] always pronounced it "homodulation."

Q. Pronounced it what?

(Testimony of Herbert Arlowe.)

A. "Homodulation," instead of the word "modulation," he said "homodulation."

* * *

A. The report I received from my engineer, Mr. Ames, indicated that the transmitter was located in the Benjamin Franklin Hotel.

Q. When did you receive that report?

A. I received that report when he returned from his investigation.

Q. When was that?

A. I would say approximately 3 to 4 o'clock.

Q. When? A. On the 7th.

Q. In the afternoon, p. m. or a. m.?

A. That would be in the afternoon.

Q. Then at the time you heard the broadcast between 12:30 and 1 you didn't know where it was coming from? A. No, I didn't.

Q. A report came to you later to determine that it came from the Benjamin Franklin Hotel, is that right? A. That is right. [124]

* * *

Q. Then on February 10 you heard the broadcast again? A. I did.

Q. Where were you when you heard the broadcast on February 10?

A. When I first heard it, I was in the office, Room 810. [127]

Q. In the Federal Office Building, First and Marion? A. Yes.

(Testimony of Herbert Arlowe.)

Q. Then what did you do after first hearing that broadcast?

A. I again proceeded to the vicinity of the Benjamin Franklin Hotel and in the same manner traced the signal, noticed that it became stronger as I approached the hotel.

Q. Did you know when you left your office in the Federal Office Building what room in the Benjamin Franklin Hotel you were going to go to?

A. No.

Q. When did you first know that you were going to go to Room 1217 in the Benjamin Franklin Hotel on February 10?

A. Well, just a few minutes before I went there, about 1:40.

Q. Before you went to the room? A. Yes.

Q. Where were you when you first knew you were going to go to Room 1217?

A. The first indication—

Q. Where were you?

A. I was on the hotel lobby floor.

Q. Were you alone or with someone?

A. I was with someone.

Q. With whom were you?

A. I was with Joe Hallock and the telephone operator. [128]

Q. The telephone operator of the Benjamin Franklin Hotel?

A. Of the Benjamin Franklin Hotel, yes.

Q. Is it from the telephone operator at the Benjamin Franklin Hotel that you obtained the

(Testimony of Herbert Arlowe.)

room number, 1217, to which you were going?

A. May I say what I did obtain?

Q. I asked you the question.

A. Indirectly, yes.

Q. Well, how did you obtain that room number?

A. She supplied me with the information that long distance telephone calls were being direct to—

Q. She told you there were long distance telephone calls from this room?

A. No, to this room.

Q. Then what did you do after she told you this?

A. I proceeded immediately to the twelfth floor.

Q. Then what did you do?

A. I contacted Mr. Ames.

Q. You still had Mr. Hallock with you?

A. Mr. Hallock did not go up with me.

Q. Where did Mr. Hallock go?

A. I don't know.

Q. He was under you direction and supervision, wasn't he? A. Yes.

Q. Where did you send him? [129]

A. I didn't send him anywhere at that time.

Q. Well, what were his instructions when you left him? A. I didn't instruct him.

Q. You don't know where he went or what he did? A. No, I do not.

Q. How long had you been with Mr. Hallock prior to that time, prior to the time you left him?

(Testimony of Herbert Arlowe.)

A. I was with Mr. Hallock in the hotel just a few minutes.

Q. Where had you met Mr. Hallock prior to the conversation with the telephone operator?

A. I had met him there at the hotel desk.

Q. And you went to the twelfth floor?

A. I did.

Q. And Mr. Hallock did not go with you?

A. He did not.

Q. And he had no instructions?

A. That is right.

Q. You did not know what he was going to do?

A. I did not.

Q. Is that normal procedure for your department, just leave the man there when you are going up to this place?

A. Mr. Hallock and Mr. Ames were assigned to help me find the room. They had been operating in the car, in the other mobile unit.

Q. Then you went up to the twelfth floor? [130]

A. I did.

Q. Who was on the twelfth floor?

A. Mr. Ames.

Q. Had he been sent there at your direction?

A. He had not.

Q. How long had he been on the twelfth floor?

A. I wouldn't say, probably a few minutes.

Q. Did he know prior to that time that you were going to go to Room 1217?

A. He did not, as far as I know.

Q. What was he doing on the twelfth floor?

(Testimony of Herbert Arlowe.)

A. He was using his little receiver.

Q. And then you went directly to Room 1217?

A. I did not go directly, no.

Q. What did you do between the time you got off the elevator on the twelfth floor and the time you arrived in Room 1217?

A. I waited with Mr. Ames.

Q. Waited where?

A. Waited in the stairway. I don't know what you would call it, the stairway is closed off. I waited in there.

Q. What were you waiting for?

A. Waiting for the signal to come back on.

Q. How long did you wait there?

A. One or two minutes. [131]

Q. Then what did you do?

A. When we heard the signal, we walked out into the hallway.

Q. Then what did you do?

A. I stayed with him, and when we walked by Room 1217 the signal in his receiver was the strongest, and I heard the voices through the door.

Q. That was approximately what time?

A. 1:46.

Q. 1:46 p. m. on— A. February 10.

Q. Then what did you do and where did you go?

A. I immediately returned to the ground floor of the hotel and proceeded to the United States Commissioner's Office or the United States District Attorney's office.

(Testimony of Herbert Arlowe.)

Q. Where did Mr. Ames go?

A. I do not know of my own knowledge.

Q. Where did you leave him?

A. I left him on the ground floor.

Q. In the lobby of the Benjamin Franklin?

A. That is correct.

Q. Was Mr. Hallock there when you came down?

A. I think he was.

Q. So Mr. Ames and Mr. Hallock were left in the lobby of the hotel at 1:46 p. m. and you went over to the United States [132] Attorney's office?

A. That is right.

Q. What was the next time you returned to the Benjamin Franklin Hotel?

A. I would say approximately 3:20.

Q. About 3:20 p m., and you were with Deputy Marshal Edward Scully at that time?

A. Correct.

Q. Just the two of you, is that right?

A. There was a Mr. Wood that drove us over, but he did not enter the hotel immediately.

Q. Mr. Wood is the man who drives you?

A. From my office.

Q. When did you next see Ames and Hallock?

A. While I was in Room 1217, Mr. Ames came back up there.

Q. Mr. Ames came back up to Room 1217?

A. Yes.

Q. Between 1:46 and 3:20 p. m., you were sitting around the United States Court House, is that

(Testimony of Herbert Arlowe.)

right, waiting for the United States Attorney, for the United States Commissioner and for a deputy United States Marshal, is that right?

A. I was doing everything in my power to find the United States Commissioner.

Q. You didn't draft the complaint, did you?

A. I did. [133]

Q. You drafted it, wrote it up yourself?

A. I drafted it and the United States Attorney's office wrote it for me.

Q. While they were writing up your complaint for you, you were sitting around waiting, is that right?

A. Until the complaint was written, yes.

Q. Then you tried to get hold of the United States Commissioner and you were sitting waiting for him, is that right? A. Yes.

Q. And then you went down to the Marshal's office, and you were sitting and waiting for the deputy United States Marshal?

A. A short wait, yes.

Q. And you arrived back at the Benjamin Franklin Hotel at 3:20 p. m.? A. Yes.

Q. You did not call your office at any time during the time you were sitting around waiting up here? A. I did, yes.

Q. When did you call your office?

A. It was probably about 2:45.

Q. Was that the only call you made to your office?

(Testimony of Herbert Arlowe.)

A. I wish to correct that. I don't believe that I called the office, I think the office called me. [134]

Q. Where were you when they called you?

A. I was probably in the United States Attorney's office.

Q. You were probably in the United States Attorney's office? You didn't have your complaint written yet?

A. Yes, the complaint was written. We were waiting for the United States Commissioner.

Q. You were waiting in the United States Attorney's office?

A. I was up there at that moment. I was back and forth. I was over the building. I think you have the wrong impression that I was sitting in the office.

Q. What were you doing going over the building? A. Looking for the commissioner.

Q. Where did you look? A. In the halls.

Q. How many halls, all ten floors?

A. I walked up the stairway from the sixth to the tenth.

Q. Did you expect to see the commissioner in the stairway between the sixth and tenth floors?

A. I expected to find him in the men's room at first. Nobody had any explanation of where he was. His office was open and he was out.

Q. Your office called you at 2:45, is that right?

A. I would say approximately that time.

Q. And did that conversation that you had with

(Testimony of Herbert Arlowe.)

your office — with whom in your office did you have a conversation? [135] A. Mr. Wiltse.

Q. What capacity does he have in your office?

A. He is regional manager.

Q. Is he your superior?

A. Yes, in a sense.

Q. Did you have a conversation with him relative to this case that you were then on?

A. I did.

Q. Tell the Court what that conversation was.

A. He told me that the hotel manager had advised him that the defendants were checking out.

Q. Did he say who that hotel manager was?

A. Mr. Standard, assistant manager.

Q. Did he say anything else to you concerning their checking out?

A. He said, "Do everything you can to hurry the issuance of the warrants."

Q. Was anything said about any bags leaving that room? A. Yes, there was.

Q. State what that was.

A. As I remember, he said that they were checking out, they were bringing down some bags.

Q. Mr. Standard had told him they were checking out and they had brought down some bags?

A. They were bringing down some bags. [136]

Q. Is that all the conversation there was in that telephone conversation? A. I believe so.

Q. At that time, you had not seen the United States Commissioner? A. That is correct.

(Testimony of Herbert Arlowe.)

Q. At 3:20 when you arrived back in the Benjamin Franklin Hotel, you and Mr. Scully, what did you do after you entered the lobby of the Benjamin Franklin Hotel?

A. I went immediately to the twelfth floor.

Q. And what occurred there?

A. Mr. Scully arrested the three defendants.

Q. Well, you went to room 1217? A. Yes.

Q. And did you knock on the door or how did you get in the room?

A. Mr. Scully knocked on the door.

Q. And you were right behind Mr. Scully, is that right? A. I was. [137]

* * *

Q. What were you doing during this time?

A. I was looking around the room.

Q. What do you mean by that? Tell us what you did by looking around the room. Did you stand in one place; cast your eyes around, or did you move around, or what did you do?

A. I moved around, looked in closets, looked in the different rooms.

Q. In other words, you conducted a search of the premises, is that right?

A. Whatever you would call it.

Q. I am asking, is that what you would call it?

A. I wouldn't call it a very thorough search.

Q. Was it or was it not?

A. It was a search sufficient to satisfy me whether the transmitter was there.

(Testimony of Herbert Arlowe.)

Q. You were looking for the transmitter, is that right?

A. I was.

Q. And you didn't find a transmitter?

A. I didn't find a transmitter.

Q. Where did you go from that room?

A. Back to the main floor of the hotel.

Q. Did you go alone or did you go with someone from Room [139] 1217 down to the lobby of the Benjamin Franklin Hotel?

A. I went with someone.

* * *

Q. Was it while you were conducting this search of the room that Mr. Ames came in?

A. He did.

* * *

Q. Did you have a conversation with him?

A. Yes, I did.

Q. Did he have a conversation with anyone else in that room when he first came in there?

* * *

A. I don't think so.

Q. Was the only conversation that Mr. Ames had with anyone, with you at this time in this room? [140]

A. So far as I know, yes.

Q. Tell the Court and jury what that conversation was.

A. I was talking on the telephone at the time.

Q. With whom were you talking on the telephone?

A. My office.

(Testimony of Herbert Arlowe.)

Q. You called your office again?

A. From the room.

Q. While you were talking on the telephone, Mr. Ames came in? A. I think so, yes.

Q. Did this telephone conversation with your office take place before or after you made this search? A. After.

Q. After you made the search and determined the transmitter wasn't there, did you call your office or did your office call you?

A. I called the office.

Q. To whom did you talk there?

A. Mr. Wiltse.

Q. What was that conversation?

A. I told him that I could not find the transmitter, and he said that it must be in the baggage that was removed from the rooms and taken to the Motor Ramp Garage.

Q. Did you know how he found out that anything had been sent to the Motor Ramp Garage?

A. Only that he said Mr. Standard told him.

Q. When did Mr. Standard tell him that? Was that before or after your first conversation?

A. I don't know; it was probably before.

Q. Probably before your first conversation with Mr. Wiltse? A. Yes.

Q. So then while you were on the phone Mr. Ames came in? A. Yes.

Q. Did you speak with Mr. Ames during that conversation that you had with Mr. Wiltse or after you finished talking with Mr. Wiltse?

(Testimony of Herbert Arlowe.)

A. After I finished talking.

Q. Mr. Ames was standing there when you hung up the telephone? A. Correct.

Q. Then what conversation did you have with Mr. Ames?

A. He said, "The equipment is in the Packard car at the Motor Ramp Garage." [142]

* * *

Q. Referring back to your leaving Room 1217 with Mr. Ames, where did you go?

A. I went to the lobby of the hotel. [144]

* * *

Q. Then you went to the Motor Ramp Garage?

A. Yes.

Q. Just you and Mr. Ames went to the Motor Ramp Garage? A. We went together.

Q. Where did you go in that garage?

A. We went to the basement.

Q. How did you know where to go when you reached the Motor Ramp Garage? How did you know to go to the basement?

A. I don't recall now, but I believe I asked the attendant at the door of the garage.

Q. Didn't Mr. Ames know where to go?

A. Yes, he did.

Q. Then why did you have to ask the attendant at the door?

A. I said I didn't remember.

Q. Did you or did you not ask the attendant?

(Testimony of Herbert Arlowe.)

A. I won't say whether I did or not. I can't remember. If I didn't, then I didn't.

Q. Then Mr. Ames knew where you were going, down in the basement of the garage?

A. Yes.

Q. When you got down in the basement of the garage, what persons, if any, did you find down there? [145] A. Mr. Hallock.

Q. Mr. Hallock is one of the other employees of your office? A. He is.

Q. And who else did you find down there?

A. I can't say whether the garage attendant was at the car at this time.

Q. He may or may not have been there, is that right? A. That is right.

Q. Was there anyone else?

A. There were two policemen farther away.

Q. Two members of the Seattle Police Department? A. As I remember, yes.

Q. They were where?

A. They were farther away. I didn't notice them at first, but they were farther away in the garage.

Q. They were farther away in the garage?

A. Yes.

Q. Did they have a Seattle police prowler car down there? A. No.

Q. They didn't? A. I didn't see any.

Q. You don't know whether they did or not, do you? A. No.

(Testimony of Herbert Arlowe.)

Q. Was there anyone else you know of down in the basement of the garage at that time? [146]

A. There was Joseph Donofrio, but I believe that he came shortly afterward.

Q. You think he came down after?

A. I believe so.

Q. Was there anyone else?

A. I believe that Mr. Wood came a little bit later.

Q. Who is Mr. Wood?

A. He is also in my office.

Q. He came down a little bit later?

A. He is the driver, the one that drove my car.

Q. Is there anyone else now?

A. You have Mr. Ames, Mr. Hallock and Mr. Donofrio. I don't recall anyone else.

Q. The two policemen? A. Yes.

Q. And the attendant, maybe? — A. Yes.

* * *

Q. After you arrived and these people were there, what happened? [147]

A. I asked the attendant to open the back of the car.

Q. How did you know there was anything in the back of the car?

A. Because Mr. Ames had told me the transmitter was there.

Q. When did he tell you that?

(Testimony of Herbert Arlowe.)

A. Either in the hotel room, or from the hotel room down to the garage.

Q. He said the transmitter was in this automobile in the basement of the Motor Ramp Garage?

A. He did.

Q. So you went down and told the attendant to open the Packard automobile, is that right?

A. I did.

Q. Did Mr. Ames tell you how he knew it was there? A. He has told me, yes.

Q. How did he know it was there?

A. Do you want me to repeat what he has told?

Q. That is what I am asking for.

A. He told me when he first found the car in the garage that he asked the attendant to open the back, after he had been informed by the attendant that the attendant had put two bags in the back of the car.

Q. Then he asked the attendant to open the back of the car? A. Yes.

Q. And he had seen these two bags? [148]

A. No, he did not obtain them. He had seen them in there.

Q. So that is what he told you and then you came down? A. That is right. [149]

* * *

Q. When you were in the United States Court House prior to leaving to go and arrest the defendants, did you ask the United States Commissioner for a search warrant?

(Testimony of Herbert Arlowe.)

A. I proceeded to the—

Q. I asked a question as to whether or not when you were in the United States Court House waiting for the Commissioner and getting a warrant from the Commissioner, did you ask him also for a search warrant? A. No, I did not.

Q. Did you ever at any proceedings in this case have a search warrant? A. I did not. [150]

* * *

Q. Does this equipment work?

A. The transmitter we tested, and it does work satisfactorily. [153]

* * *

Redirect Examination

Q. (By Mr. Dore): You say you have never tested the receiver?

A. Never tested the receiver, we don't know whether it will work or not.

Q. You have tested the transmitter?

A. We have tested the transmitter. It will radiate a signal from here into Oregon.

Mr. Dore: That is all.

Recross Examination

Q. (By Mr. Pomeroy): What test did you use on February 15?

A. We wanted to test the transmitter to see whether the frequency was the same as the signal we had heard during the [158] investigation.

(Testimony of Herbert Arlowe.)

Q. How did you test that?

A. We measured with equipment in our office while it was operating. We also asked our monitoring station in Portland, Oregon, to measure. The results were exactly the same.

* * *

JOHN W. WATSON

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore:

Q. What were you ordered to do, and when and where?

A. Approximately February 15 I was ordered to test the transmitter which had been placed in my possession at this time, and perform a test to determine that the transmitter was functioning properly and that it was capable of radiating a signal.

Q. Was it so capable?

A. It was found to be so.

Q. Was it functioning properly on that day?

A. Yes, it was. [184]

* * *

Q. I might ask you again whether you recall any names on any of the broadcast messages intercepted?

A. Yes, I do. I do not recall the exact dates on which I heard them. [185]

(Testimony of John W. Watson.)

Q. What names do you recall?

A. I recall hearing names; Ralph, Joe, Plesa and Casey.

Q. Did you hear any message broadcast concerning tailor? A. Yes, I did.

Q. What message was that?

A. As I recall, the message stated something to the effect that the tailor was coming and that there was something about ordering 20 or 40. [186]

* * *

PATRICIA H. JAMES

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Evans:

* * *

Q. Where are you employed?

A. I am employed with the Federal Communications Commission.

Q. In what capacity?

A. As a stenographer, general office worker, stenographer.

Q. Were you so employed during the months of January and February of this year?

A. Yes, I was. [192]

* * *

Mr. Evans: I believe her testimony is, Your

(Testimony of Patricia H. James.)

Honor, that on the 3rd, 4th, and 5th she transcribed in her shorthand books from dictaphone records. As to the 7th, I believe she testified she took her notes directly from hearing it on the radio.

* * *

Q. Who else was present on the 7th at the time you were listening to this broadcast?

A. Mr. Watson. [194]

* * *

Q. Directing your attention to the 7th of February, do you recall approximately the time that the station came on the air?

A. Around noontime, possibly a little later.

Q. How long did it continue on the air before it was off for the day, as far as you know, approximately?

A. I really don't know. It was on and off.

Q. Did that continue for an hour, two hours, three hours?

A. Yes, about two hours, I think.

Q. During this broadcast, I will ask you to state whether [195] or not you heard any names mentioned? A. Yes, on the 7th I did.

Q. What were those names?

A. One name was Edward, and Casey, and Plesa.

Q. Just relate as nearly as you can remember what you heard along about 2 o'clock, if you can get the time down sometime in that period.

A. At that time apparently they were testing to

(Testimony of Patricia H. James.)

see if the receivers worked. That was the impression I gathered from the broadcast.

Q. Just tell us what you heard.

A. The person who was broadcasting said, "Can you hear me, raise your hand, raise both your hands if you can hear," and directed them to cross the street.

Q. Did he use any names in connection with crossing the street?

A. Yes, Casey and Edward.

Q. Did he use the name Edward or Eddie?

A. No, Edward in this particular instance. Do you want me to continue on with that?

Q. Will you, please?

A. He asked them to cross the street and go toward the river, and apparently there was a red light on at the time, and said, "Don't pay any attention to red lights. What's a red light when there is so much at stake. What's at stake, [196] a whole shoe box full." That's not verbatim but——

Q. You said something about a box?

A. A shoe box full, and he also mentioned the tailor coming up and asked them to wait on that same side of the street. [197]

* * *

Q. Did you carry out any such functions as this that you have spoken of on the 8th day of February, 1949?

A. We didn't hear anything on the 8th.

Q. On the 9th of February, 1949? A. Yes.

(Testimony of Patricia H. James.)

Q. Can you recall generally about how long the station was on the air on that day?

A. Quite a while, I think it was two or three hours at least; intermittently, of course.

Q. Will you relate as nearly as you can remember what you heard on the 9th?

A. Well, there wasn't so much testing, and they mentioned Fair Grounds and Hialeah race tracks, and they mentioned horses. In one instance, there was a photo finish between a No. 1 horse, and 6, and the advice given was to bet, "You can't lose," and the words, "bet, bet" were repeated several times. Several races were broadcast. The results of races were given that day.

Q. Do you recall what the nature of the broadcast was on the 9th in regard to horse racing; that is, was there anything that indicated a report of the actual running of a race?

A. Yes. The words, "At the post, running, at the quarter, and half," and telling what horse was ahead and what [198] was running second, as I recall.

Q. I will ask you whether or not the word "Fair Grounds," was heard at any time? A. Yes.

Q. I will ask you whether or not you recall anything about "Fair Grounds" being the winner?

A. No, I don't.

Mr. Pomeroy: Fair Grounds is the name of a track. [199]

* * *

(Testimony of Patricia H. James.)

Q. Do you recall approximately the time that this station [200] came on the air on February 9, 1949?

A. It was around 1 o'clock, I believe.

* * *

Q. Just tell us as nearly as you can remember what you heard on that broadcast.

A. Well, there was some testing, not a great deal, mostly "Testing, one, two, three, four," and Fair Grounds was mentioned, post time at Fair Grounds, or post is forty, some expression of that sort, and the winner at Hialeah in one particular race, I believe it was a photo finish, and advice was given to bet on horse No. 1 and 6. Then a winner at Fairgrounds was mentioned, but not by name, just No. 5.

Q. How was the winner mentioned?

A. As No. 5.

Q. I will ask you whether or not during the course of these broadcasts in regard to races there was any running account as to the progress of the race?

A. Yes, there was, at Hialeah. I don't remember the exact expression used, but the gist of it was that 1, 6 and 7 were running, and they mentioned the quarter and the half and the stretch, I believe, I am not positive about that. [201]

* * *

Q. As to the broadcast on the 7th of February about which you testified yesterday, was there any-

(Testimony of Patricia H. James.)

thing peculiar about the voice so far as you were able to distinguish?

A. Well, I wouldn't say it was peculiar, but I would say I recognized it as probably someone who had spent a good deal of time on the Eastern Seaboard, around New York or New Jersey. I lived there a good many years myself, and I don't think very many people in the country speak with that inflection in their voice, or manner of pronunciation. [202]

* * * *

Q. On February 10, 1949, did you listen to any broadcasts? A. Yes, I did.

Q. Who was with you at that time?

A. Mr. Watson.

Q. Is this the same broadcast which he testified to here? A. Yes, it was.

Q. Do you recall approximately what time that came on the air February 10?

A. I believe it was shortly after 1, around 1 o'clock.

Q. About how long did they stay on the air?

A. A little less than an hour.

Q. Just tell us what you can remember as to the broadcast you heard on the 10th of February, 1949.

A. It was fairly brief. The broadcast didn't continue for the whole hour. There was several short periods of [203] testing, and one race at Santa Anita was mentioned. No. 10, Toman, I

(Testimony of Patricia H. James.)

believe it was, was mentioned as the winner, and after that there were no more transmissions.

Q. Would you state who was the winner in this particular race? A. Toman.

* * *

Q. Do you recall what you read as to the winner in the second race at Santa Anita, from the newspaper?

A. ~~Well, I~~ really can't say definitely that it was the [204] second race, but I did compare my——

Mr. Pomeroy: Just a moment. It isn't responsive. It calls for a yes or no answer.

The Court: The objection is sustained.

Q. Will you state whether from consulting the newspaper you found any place in the Santa Anita race where Toman was the winner? A. Yes.

Mr. Pomeroy: Counsel knows much better than to ask a question like that. That is the simplest kind of evidence. That is the best evidence. Bring the paper in here. We would like to see it, too. I object to it on the ground it isn't the best evidence, and he knows that.

The Court: Sustained.

(Newspaper clipping marked Plaintiff's Exhibit 8 for Identification.)

Q. You have been handed what has been marked for identification as Plaintiff's Exhibit 8. Will you state whether or not you can identify it, without revealing the contents?

(Testimony of Patricia H. James.)

A. Whether I can identify it without revealing the contents? Yes.

Q. Will you state what it is?

A. It is a clipping from the P.I. for the following day, for the 11th. [205]

* * *

EVERETT AMES

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows: [216]

Direct Examination

By Mr. Dore:

Q. State your full name, please?

A. Everett Keith Ames.

Q. How do you spell your last name?

A. A-m-e-s.

Q. Where do you live?

A. 7010 54th Avenue N.E. in Seattle. [217]

* * *

Q. Where are you now employed?

A. I am employed by the Federal Communications Commission as a radio engineer, investigator.

Q. Were you so employed on or about February 3, 4 or 5, 1949? A. I was. [218]

* * *

Q. I will ask you whether you were assigned to the investigation of this case? A. I was.

(Testimony of Everett Ames.)

Q. On what date and by whom?

A. I would say I was assigned at the instant the telephone call that I received from Auckland that was complaining of this case.

Q. What was that date?

A. That was on February 2, Wednesday.

Q. In other words, did you receive the original complaint call? A. I did.

Q. From whom was that call made, did you say?

A. Herbert Auckland, a radio amateur.

* * *

Q. What time of day was that that you received that call?

A. Probably in the neighborhood of 4 o'clock, or 3:30, I am not too positive. [219]

* * *

Q. What was the nature of the complaint?

A. Auckland stated in the neighborhood of 1 p.m. or 1:15, while driving to work, he heard these voices on his radio in his car. He has an amateur radio station and I believe at that time he had a transmitter in his car.

Q. Was there any description of the band of operation at that time to you?

A. Yes. He told me that it was on the 80-meter band, the phone portion, at a frequency in the neighborhood of 3920 to 4000, that he could not accurately determine the frequency.

Q. In common parlance, in what band is that?

(Testimony of Everett Ames.)

A. That is the band that is set aside for radio telephony communication, or voice communication.

Q. Is that commonly known as, we have been discussing it as the amateur band, or is it another band?

A. It is the amateur band as we have been discussing it.

Q. What did you do pursuant to that complaint?

A. I immediately turned on the receiver in our office, [220] in Room 810, tuned to that frequency.

* * *

Q. Did you on February 3 hear any voices over the receiver? A. Yes, I did.

Q. Was that an illegal broadcast on that day?

A. Yes, it very definitely was.

Q. What did you hear at that time?

A. At that time, I heard such transmissions as, "Testing, testing, one, two, three, four, testing, one, two, three, four." That was repeated any number of times. I also heard, "Do you hear me, Eddie, do you hear me, Eddie, if you hear me, raise your hand." That was repeated probably a few times as well. [221]

* * *

Q. Did you do anything by way of investigation other than tuning in on the receiver that day?

A. Yes. At the time I heard that, I was in the mobile unit, which is our name for an investigative

(Testimony of Everett Ames.)

car which contained receivers, and I heard everything on that receiver in the car.

Q. Is that the car that also contains a radio direction finder loop? A. Yes, it is.

Q. Is that the car used in your standard procedure of direction finding technique of the department? A. Yes.

Q. Just tell the Court and jury what you then did.

A. I wasn't driving the car. I was in the back of the [222] car where the receiver is.

Q. Who was driving?

A. Engineer Hallock of our office.

Q. Go ahead.

A. At that time I had already had the receiver tuned in, so I took a loop bearing and then we proceeded to another location to take a second bearing, to get a cross on that. Actually, we took three or four bearings.

Q. Did you plot those bearings in?

A. Yes, we plotted those bearings.

Q. Were you able to fix any location as to the epicenter of these transmissions?

A. Yes. We picked a location in the vicinity of Western Avenue or First Avenue and Stewart and Virginia.

Q. Could you fix that location any more definitely than by streets? A. Yes, we can.

Q. What did you do subsequently to that?

(Testimony of Everett Ames.)

A. That occupied practically the whole day, I mean all of the time I heard the transmission.

Q. That was during the 4th?

A. No, that was the 3rd.

Q. What did you do by way of investigation on the 4th?

A. On the 4th, we were again listening and we did not hear the signal. [223]

Q. Who do you mean by we?

A. Engineer Hallock and myself in the investigative car.

Q. Go ahead.

A. We did not hear the signal on the frequency we had heard it on the previous day, that is 3936.

Q. Did you hear any unlawful transmission that day?

A. Yes, we heard the signal come in on 3536 kilocycles.

Q. Is that within the amateur band?

A. That is not within the voice portion of the amateur band; however, it is within the code portion of the band.

Q. Was this signal that you heard a voice signal?

A. Yes, sir, it was a voice signal.

Q. How do you explain it was in the code band?

A. I don't know why it was there. It was there.

Q. Would you explain to me and the jury and Court and counsel how that possibly could be, that these readings would be within the amateur band and yet, as you say, they were voice signals but they were in the code band?

(Testimony of Everett Ames.)

A. Well, my interpretation at the time was that it was obviously an unlicensed or illegal station at that time.

Q. In other words, the voice band extends from where to where in kilocycles?

A. The voice band extends from 3850 kilocycles to 4000 kilocycles.

Q. What bands are reserved for code communication? [224]

A. The code communications can be anywhere from 3500 to 4000 kilocycles.

Q. How do you distinguish the two?

A. Well, the code is dots and dashes. The voice is actual voice, I mean, you could hear the person talking, audio signals.

Q. Was there any identification of the station on February 4? A. No, sir.

Q. Any procedure of identification?

A. I don't understand the question.

Q. Any procedure of identification?

A. There wasn't any identification used.

Q. How many voices did you hear on that day?

A. I heard one voice.

Q. Male or female? A. Male voice. [225]

* * *

Q. What did you hear as to language in the message on February 4?

A. On February 4——

Q. If you recall.

A. I heard such phrases as, "Testing, one, two, three, four" and then I heard one transmission

(Testimony of Everett Ames.)

whereby—I might state that these transmissions were on and off at different times—I heard one transmission whereby they announced that information was coming from Santa Anita. I heard phrases such as "They are running at Santa Anita."

Q. Did you hear any personal names mentioned that day?

A. No, I did not. I heard other information to the effect that the race was a photofinish, a three-horse photofinish, "They hit the wire together," or something to that effect.

Q. Can you set the time approximately on the 4th that you heard these signals?

A. No, I did not.

Q. Was it in the morning or afternoon?

A. It was between the times, approximately, 12:30 until 3 p.m., the exact time I didn't have. I also heard another result of a race whereby they mentioned the winner as being Manzanito, and there was another race result giving Newsworthy as the winner. Actually, it didn't win the race, though.

* * *

Q. What else did you do by way of investigation on February 4?

A. On February 4, immediately on hearing the signal, we proceeded in the car along Elliott Way south, taking bearings approximately each block as we could line them up with the streets on the other side of Western Avenue. I believe we took about five or six bearings. Those bearings indi-

(Testimony of Everett Ames.)

cated that the signal was not in the same location that it was on the previous day.

Q. Did you plot in those bearings?

A. We plotted in the bearings. Due to the nature of the bearings, they were rather dispersed but it did give us an area in the vicinity of Third and Fourth Avenues bounded by Seneca Street.

* * *

Q. On February 5, what did you do by way of investigation of the case? Who was with you? What did you do? Where did you go?

A. On February 5, that is Saturday, on February 5 we were again at the receiver.

Q. When you speak of we, would you please set out who you mean by we?

A. I would like to retract that. On February 5, I was in the office at the time the signal first came on. Engineer Hallock and I then immediately went downstairs to our garage in the same building and we then proceeded in the mobile unit out on the street. We picked up the broadcast immediately on coming out of the garage.

Q. What time?

A. Probably about 1 o'clock.

Q. One o'clock in the afternoon?

A. In the afternoon.

Q. You say you proceeded with your directional equipment in the car? A. Yes, sir.

Q. Then what did you do? Where did you go?

A. We then made 8 meter runs. We did not take loop bearings.

(Testimony of Everett Ames.)

Q. What do you mean by S meter runs?

A. On the receiver, there is a meter which indicates the intensity of the signal being picked up, and it was commonly called an S meter. I believe the S would probably stand for signal strength, and the procedure there is——

Q. Would you explain the equipment briefly? Just give us a brief picture.

A. We use the radio receiver. It is called a Hallicrafter SX28, which is the type. It is a large receiver and it contains this small meter on the front. It is calibrated in decibels, or S readings.

Q. Is there other attached equipment to that receiver?

A. The receiver is self-contained, with the exception of the loudspeaker, and of course the loop we had attached at times; other times, we didn't.

Q. For what purpose do you use that receiver?

A. The receiver is used for the reception of any radio signals, and it is used extensively, well, for monitoring purposes or investigative purposes.

Q. That is mounted in the car, is it?

A. It is sitting on a table in the car, held in place by a strap.

Q. What did you do? [229]

A. We took these S meter runs. We took them heading east and also west on Seneca. We took them on Third and Fourth Avenues, that is, heading north and south.

Q. What were your results of your S meter runs?

(Testimony of Everett Ames.)

A. The S meter runs, all four of them, indicated the source of the signal to be at the intersection of Third and Seneca, or very close to that intersection.

Q. Is there any landmark there that you could make more clear for us?

A. From my extension at that time, I believed it to be the Hotel Stratford.

Q. Were you able with that S meter reading —are you able to ascertain whether a transmitter transmitting radio energy is located high or low above the ground?

A. That would depend a lot on the experience of the operator. Sometimes you can. A good operator can determine whether or not it is high above, if he is passing right along the street in front of the building it might be in.

Q. How much experience have you had with this type of S meter operation?

A. I have used them for several years, probably about three or four years.

Q. How many cases have you investigated?

A. Probably 30 or 40 where I have used that equipment or similar equipment. [230]

* * *

Q. What messages did you hear over the air that day through your receiver?

A. I heard phrases such as "Testing, one, two, three, four, testing for modulation," and something to the effect that "I have asked for the results of the first race to be given." I then heard the re-

(Testimony of Everett Ames.)

sults of four races whereby the winners were announced each time.

Q. Was it a man's voice or a woman's voice?

A. A man's voice.

Q. Was it a one-way or two-way signal?

A. It was a one-way signal. There was no answer or any attempt to get an answer.

Q. Was there any procedure of identification?

A. There was none at all. [231]

Q. Was there any identification?

A. None at all.

Q. Were there any personal names used in the messages that day?

A. No, I didn't hear any personal names.

* * *

Q. I will direct your attention to February 6 and ask if you made any investigation on that day? I believe the 6th would be Sunday.

A. February 6th was on Sunday. I did not.

Q. On February 7th, what did you do by way of investigation?

A. On February 7th, Engineer Hallock and myself were again in the car, Hallock driving. I was operating the receiver, and we again picked up the signals on 3536 kilocycles.

Q. What else did you do?

A. We took a bearing and immediately realized that the station had moved and was in a different hotel.

Q. Why did you realize that? How did you realize it?

(Testimony of Everett Ames.)

Mr. Pomeroy: What date is this?

Mr. Dore: February 7th.

Q. You say that you immediately realized that the source of transmission had been moved from the day previous, or the [232] 5th. What caused you to arrive at that conclusion?

A. The first act that I did was to take a loop bearing on the station from a spot that was clear, where I knew the bearing would be valid, and the bearing did not indicate in the direction of the Stratford Hotel.

Q. What did you do after taking that bearing and arriving at that conclusion?

A. We then took other bearings to pinpoint it.

Q. How many bearings would you say you took?

A. Probably three or four.

Q. Is that the standard procedure and method?

A. Yes.

Q. What did you locate at that time?

A. We located the Benjamin Franklin Hotel as being the source of the signal.

Q. That was on the 7th?

A. On the 7th.

Q. Did you use any S meter readings on that day?

A. Yes, we did. We used several of them. [233]

* * *

Q. During what time was this?

A. Approximately 12:30 to 3.

Q. On what band?

(Testimony of Everett Ames.)

A. 3536 kilocycles, in the amateur band.

* * *

Q. Was there any method or procedure of identification?

A. No, there was no procedure of identification, although I did hear names mentioned. I wouldn't say it was a directed [235] message.

Q. What names did you hear mentioned?

A. I heard the names, "Plesa, Casey."

Q. Do you recall the more exact language of the message concerning those names?

A. "Plesa, Casey, raise your hand if you hear me." I heard several transmissions of "Raise your hand, do a jig, Casey."

Q. Did you hear any other names mentioned?

A. No, sir.

Q. Would you say that the procedure and method of transmission that day was similar to the other days?

A. Quite similar, except there was no race track information given.

Q. Did you on the 3rd of February, 1949, or the 4th, 5th, 6th or 7th see any of the three defendants seated here at my right?

A. I don't recall seeing them.

Q. I will now direct your attention to February 8th and ask you if you proceeded with your investigation on that day?

A. Well, we attempted to, but we did not hear any signals.

(Testimony of Everett Ames.)

Q. Directing your attention to February 9th, what did you do in your investigation?

A. On February 9th, the procedure was quite similar. Engineer Hallock was driving, I was in the back of the car [236] taking bearings. We did hear a signal on 3536.

Q. What time was that?

A. In the neighborhood of 12:30.

Q. In the afternoon?

A. Yes, in the afternoon.

Q. On what band or frequency did you intercept this message?

A. In the amateur band, actual frequency, 3536 kilocycles.

Q. That was the same kilocycle reading as on the 7th, is that correct?

A. It wasn't only the same kilocycle reading, but the same vernier dial setting in each case, which would pinpoint it much more accurately.

Q. You are beyond me there. Could you explain what you mean by a vernier dial reading?

A. We have a dial on the set. It has a very slow motion, and it can be very accurately read or calibrated. It is such that if you take the number of that dial reading and at a later date come back to it, you will get the same frequency to within a very accurate degree, I would say about a quarter of one per cent. [237]

* * *

Q. You were speaking of a dial vernier reading and explaining the meaning of that.

(Testimony of Everett Ames.)

A. I was trying to point out that the dial vernier was left set at the same place on the receiver dial, and from one day to the next the signal came on without any manipulating of the receiver, and also that the receiver is capable of holding that frequency very accurately, I would say within a quarter of one per cent, approximately.

Q. Is that a standard method and procedure in investigation? A. Yes, sir.

Q. And by the use of that vernier dial, what was your finding?

A. Well, I could say definitely that the receiver —I should say that the transmitter was on the same frequency each of those days, that I did not have to adjust the receiver at all to pick it up from one day to the next, which would tie in pretty well that it was the same transmitter.

Q. What did you do after receiving these dial vernier readings?

A. Well, that was just the reading on the dial. I just verified that it was the same each day. [238]

* * *

Q. As a result of the vernier dial readings, were you able to locate the center of transmission?

A. Not that vernier dial, because that wouldn't give me [240] the center; however, by the loop scale, yes, in other words, by the loop readings I could fix it very definitely.

Q. Did you fix it?

A. I did fix it to the Benjamin Franklin Hotel.

* * *

(Testimony of Everett Ames.)

Q. Before we get the story out of order, you say you proceeded up from floor to floor?

A. Yes, sir.

Q. You say you did that the first time. Was there another time other than the first time?

A. I went up and down, I guess, two or three times that day.

Q. Between what hours, would you say?

A. Between 1 and 1:30—I don't know what time it was. It was in the afternoon, roughly around 2 o'clock, let's say.

Q. Did you find any results from your investigation with your receiver that day?

A. No, I did not. [242]

* * *

Q. Did you on February 9 hear any other illegal transmissions other than these that you referred to? A. No, I did not.

Q. Would it have been possible with the equipment that you were using to know whether any other illegal transmissions were made on that day during that time?

A. During the time I was listening, I could say there were no other transmissions made on or near that frequency, either legal or illegal. It was the only signal on the air [245] capable of being heard in Seattle.

Q. Why do you say that?

A. If I had heard another signal on the air at that time, it would have interfered with my loop

(Testimony of Everett Ames.)

bearings and my S meter run. Also, I would have heard a heterodyne, which is a whistle, between the two stations. If they were within approximately five or six kilocycles of each other, I would have heard a signal between the two, a howl, a whistle, or something.

* * *

Q. I direct your attention to the date of February 10, 1949, and ask you what you did on that day by way of investigation of the case?

A. On that day, I was in the mobile unit with Hallock as the driver.

Q. Would you set the times, please?

A. On February 10, I was in the mobile unit approximately 12:30 p.m., with Engineer Hallock as driver, and I was at the receiver controls.

Q. Go ahead and describe what you did.

A. We heard the signal again at the same location, same dial setting, same frequency, 3536 kilocycles. I immediately told Hallock which directions to drive to take S meter [246] readings. I did not want to risk being seen with the loop up, so we did not take loop bearings.

Q. Just describe what you did.

A. On that day we drove past the hotel twice, got very good S meter indications that the signal was from the hotel. I then tried a different procedure to try and place it more accurately. I started along Stewart heading west with the mobile unit, Hallock driving, and I recorded the S

(Testimony of Everett Ames.)

meter readings as we proceeded along Stewart, that is in front of the Orpheum Theater. We then turned north, heading along Fifth, passing the front of the hotel. I was taking S meter readings at all times.

We then turned the corner, headed east along the next street over, Virginia, and went as far as the alley. We then turned south on the alley, headed back toward Stewart. In other words, we completely went around the building, noting the S meter readings as we went. They very decisively indicated the signal to come from the north side of the building, that is, in the vicinity of the corner there at Fifth and Virginia.

The Court: Will you state the north and south streets if you recall their names?

The Witness: As I recall, it was Virginia Street on the north and Stewart Street on the south. The block is a triangle almost there, but we came down the alley, so [247] it made a rectangle out of our bearings.

Q. By your S meter readings were you able to ascertain whether the signal came from low above the ground or high above the ground?

A. I very definitely had the opinion that the signal was high above the ground.

* * *

Q. During what hours of the day was that?

A. That was between 1 and 1:30.

Q. That you were taking the S meter readings?

(Testimony of Everett Ames.)

A. Yes, sir.

Mr. Pomeroy: This is February 10?

The Witness: February 10.

* * *

Q. Having taken your S meter readings, what did you do after that?

A. Engineer Hallock parked the car a few blocks from the hotel and we proceeded on foot, but not together, to the hotel.

Q. Just go ahead with your story.

A. I entered the hotel and immediately went upstairs. I don't recall whether I went up in the elevator or whether I walked. I did go upstairs to the top floor.

Q. Did you have any equipment?

A. I had this small receiver which was underneath my coat, it was lashed to a web belt and I had a small loop antenna also under my coat. The only thing visible was one of those small hearing aid buttons in my ear.

Q. Were you receiving any messages at that time?

A. I did not receive messages until I—well, as I recall now, I did walk up the steps. They are bounded by a metal door into each room, probably a fire door, I suppose. [249]

The Court: Each room or each floor?

The Witness: Each floor. When I opened the door to the twelfth floor, I immediately heard the same type of signals I had heard on the receiver in the car.

(Testimony of Everett Ames.)

Q. On what band? A. 3536 kilocycles.

Q. That is the same band?

A. That is the same band.

Q. Do you recall the language of the message?

A. I heard phrases, "Testing, one, two, three, four." I believe I heard, "Testing for modulation."

Q. Any names used?

A. I did not hear any names.

Q. Just a series of testing, is that correct?

A. That is correct.

Q. What did you do after hearing that?

A. When I stepped into the hallway, I immediately heard this signal. I then walked down the hall to the elevator shaft, which was in the center of the hall, and the signal became very greatly lessened, and when I was about opposite the elevator shaft I could not hear it again. I immediately then walked back toward this stairway door and it increased a short distance beyond that. As I turned the corner, it then started in to decrease again, which very definitely indicated that the signal was strongest in front of Room 1217. [250]

* * *

Q. You say your receiver indicated Room 1217?

A. Yes. That was an oral test, and I then proceeded down to the floor beneath, which was the eleventh floor. I again noted I could not hear the signal while in the stairwell. I did hear the signal on the eleventh floor, but it wasn't nearly as loud on the eleventh as it was on the twelfth.

(Testimony of Everett Ames.)

Q. Then what did you do?

A. I then walked in each direction from the corner to note whether the identical situation would be observed, and it was. I then immediately went to the elevator. I don't recall that I entered the elevator on the eleventh or the twelfth; however, I went in the elevator to the lobby and I saw Engineers Hallock and Arlowe in the lobby.

Q. What did you do?

A. I reported my findings to Engineer Arlowe.

* * *

Q. Just tell what happened.

A. Some conversation about the room took place between Arlowe and myself. He had information that persons with the names we had mentioned, Casey and Plesa, had occupied that room, 1217, so we immediately went on the elevator up to the [251] twelfth floor and I then heard the signals again.

Q. What did you hear at that time?

A. There was more "Testing, one, two, three, four."

Q. Could you locate the center of transmission?

A. I again located the center as being Room 1217, and Arlowe was with me. At one time I repeated to Arlowe what I heard so he could verify what I heard by listening in the door.

Q. Was it the same?

A. It was the same. We compared words.

Q. How was Arlowe listening at that time?

A. He was listening with his ear to the door.

[Testimony of Everett Ames.)

He could hear voices, not through any medium of radio, but directly.

Q. What did you do then?

A. I recall there was a maid wandering around the hall somewhere, so I walked past it and went to the floor below, eventually ended up in the lobby again. I didn't go back up there.

Q. To make it a little more clear, who was with you at the door at that time?

A. Arlowe was with me, the engineer in charge.

Q. Anybody else? A. Not at that time, no.

Q. You say that you left that location, the door of Room 1217, and you went where? [252]

A. I went to the floor below to again verify my results, and they were the same. I then proceeded to the lobby. I was talking to Engineer Hallock. We more or less stood down there without much to do.

Q. About what time of day was that?

A. It was probably between 1:46, I believe that was the time Engineer Arlowe heard the signal in the door, and possibly 1:50, 1:52.

Q. Why are you so positive about the time?

A. Because he told me the time at this time.

Q. He told you the time then when you were in front of the door?

A. I believe he mentioned the time, or something to that effect. I also remember I looked at my watch on the way up in the elevator.

[Testimony of Everett Ames.)

Q. What time was it when you looked at your watch?

A. Approximately 1:42, that is when Arlowe and myself were going upstairs in order to hear that.

Q. You say that you were down there in the lobby and didn't have much to do. Why was that?

A. I was waiting instructions.

Q. What were your instructions?

A. I figured that I had already located the room. We were just waiting then for a warrant to make the arrest.

Q. Did anybody go for a warrant? [253]

A. I believe Engineer in charge Arlowe did. He said he was going to.

Q. Then what did you do?

A. Engineer Hallock and myself, we stood a little behind—I don't mean behind the desk, but there was sort of a passage there where we were out of people's way, by where the telephones were. We just stood by waiting until such time as the warrant could be served.

* * *

Q. Up to that time, the time you located the transmissions in Room 1217, did you see any of the three men?

A. I don't recall seeing any of the three.

Q. You testified you went back to your office?

A. Yes, sir.

Q. What occurred after that?

A. A short time later, a telephone call was received and Engineer Hallock, I observed, was talk-

[Testimony of Everett Ames.)

ing to Mr. Standard, assistant manager of the hotel: Hallock then told me that they were about to check out and that they had a car at the Motor Ramp Garage. Hallock and I then decided we had better go to the Motor Ramp Garage, because at that time we did not know whether or not the warrant had been served, and we figured at that time, in the event the persons operating this transmitter that we had traced were going to go somewhere, we could follow in our car.

Q. Did you go to the garage? A. We did.

Q. Would you state the time approximately when you arrived there?

A. As near as I can recall, it was probably about 2:15, some place thereabouts.

Q. What time did you estimate?

A. About 2:15, or some place thereabouts.

Q. Could you set the time approximately to the best of your ability when you left the lobby of the hotel to go to your office?

A. Well, as near as I can recall, it was about 1:55, maybe one or two minutes earlier.

Q. How long did you remain in the garage?

A. Well, I was there for about 10 or 15 minutes and then I left and I returned probably 10 minutes later, waited until probably 3:20 or 3:15.

Q. Before we get ahead of ourselves in the portrayal of these events, what did you do when you arrived at the garage at approxmiately 2:15? [255]

* * *

[Testimony of Everett Ames.)

A. We talked to the attendant there, Turner was his name, and he told us that the car was there in the garage and that some person had recently —I mean had a very short time before, told the attendant to put two bags into the car. The attendant did do that, he said.

Q. Upon receiving that information, what did you do?

A. I believe about that time we got a telephone call from the office.

Q. Did you talk on the phone?

A. No, I did not. Engineer Hallock did. I believe the telephone call was about that time, as I recall, stating that a warrant was served, or I should say, the warrant was issued or the complaint had been filed, or something to that effect, indicating that action had already been taken and accomplished in making out a warrant.

Q. Then what did you do?

A. I believe it was following that that I asked Turner to accompany me down so I could see the car.

Q. Did you see the car? A. I did.

Q. What kind of a car was it? [256]

A. It was a Packard convertible coupe, black, 1948 model, I would judge.

Q. Do you remember the license?

A. It had a Rhode Island license, I don't recall the number now, a '48 license plate.

Q. Were you able by any other means to more definitely identify the car?

[Testimony of Everett Ames.)

A. I had never seen the car before; however, the attendant told me it was the car he put the luggage in.

Q. What did you do?

A. I asked the attendant whether he had the keys for the car, or who had custody of it. He said he had the keys for the car.

Q. Then what occurred?

A. I asked him if he could open the back compartment in the car, and I saw the two suitcases.

Q. Did you take the suitcases out at that time?

A. I didn't remove the suitcases from the car.

Q. Did you open the suitcases at that time?

A. I opened the large suitcase, looked in and saw the transmitter, and closed it.

Q. Did you take any of the things from the trunk at that time?

A. No, sir, I took nothing from the suitcase, nor did I take anything from the car. [257]

Q. Then what happened?

A. I told the attendant to lock the car again.

Q. Go ahead with your story.

A. We then waited for some time in the office of the garage. I was waiting for somebody to come and pick them up. About that time we had a telephone call from our office again advising us—this was apparently from Wiltse, the engineer in charge, so Hallock told me—advising us to contact a policeman if we could, so that we would not have trouble or a disturbance or something, we did not

[Testimony of Everett Ames.)

know the nature of the people that we had been tracing and we did not want a riot or some such disturbance to take place.

Q. Where was the car in the garage when you saw it?

A. It was on the lower ramp, one deck below street level.

Q. Did you call any police?

A. I spent about 15 minutes looking for one, didn't find one and returned to the garage. Very shortly thereafter a police car had been dispatched by our regional manager, Mr. Wiltse, and it arrived in front of the garage.

Q. Then what happened?

A. Hallock and I told the police officer that we were expecting—no, we didn't say that. We told them that we had this case in question and that we thought the persons that owned this car may try to get away before we could get the warrant served, and we told the police that we didn't [258] want them to do anything but stand by in case there was some kind of violence, or possibly they could trail the car in the event it did go from the garage.

Q. Then what happened?

A. The police car went down underneath the deck to the same ramp that the car under question was on and parked, I don't recall, maybe 25 or 30 or 40 feet away from the car.

Q. Go ahead with your story.

A. I waited around and a short time later En-

[Testimony of Everett Ames.)

gineer Wood came down and he told me that the warrant had been issued, that the arrest was being made up at the Benjamin Franklin Hotel, that he was with Arlowe and the deputy marshal and that they were trying to locate the transmitter equipment, so I then proceeded with Engineer Wood up to the hotel, to Room 1217. In Room 1217, of course, was the marshal.

Q. Could you approximately set a time as to the time that you left the garage and the time that you arrived back in Room 1217?

A. In the neighborhood of—well, I could say how long it took me to get there, I don't know exact times. I could say it was in the neighborhood of 3:20 or 3:25 when I arrived at the hotel. It probably took me about three or four minutes to go from the garage up there.

Q. Where is the garage in relation to the hotel?

A. It is directly behind the hotel, separated only by an [259] alley.

Q. After you arrived back in Room 1217, what did you see and hear?

A. On first entering the room, I saw Deputy Marshal Scully and I saw the three defendants and then I saw Arlowe. I didn't see him right at first. I believe Arlowe had just completed a telephone call. or was completing it as I entered, and he told me that Wiltse said, Regional Manager Wiltse had said that the equipment was in the car, but I also furnished him that information at that time.

[Testimony of Everett Ames.)

Q. You told Mr. Arlowe at that time that you had located the equipment in the car?

A. Yes. The arrest had already been made, incidentally.

Q. Who was in the room when you arrived other than Scully and Arlowe?

A. There was Plesa, LeClair and Casey.

Q. These three men here?

A. Those three men.

Q. Can you identify these men positively as being the men who were in that room?

A. I definitely can. [260]

* * *

Q. After you left the room, where did you go?

A. Down in the elevator.

Q. All of you together?

A. Yes. I heard some conversation about—one of the three defendants, I don't recall which now, asked how they were going to be taken. Somebody objected to making it noticeable as they went through the lobby, and I believe one of them offered to pay the cab fare up to the marshal's office, something to that effect.

Q. Did you hear any other conversation?

A. No, I didn't.

Q. Did the elevator eventually arrive at the first floor? A. Yes, it did.

Q. What occurred then?

A. Arlowe and myself, along with Engineer

[Testimony of Everett Ames.)

Wood, then went to the garage, not accompanied by anybody else.

Q. What happened to the defendants and Scully? Where were they when you last saw them?

A. I believe they were in the lobby, as I recall.

Q. You and who else went to the garage?

A. Arlowe and Engineer Wood. [262]

* * *

Q. What time would you say it was?

A. Probably about 3:30.

Q. How long did it take you to get over to the garage?

A. Possibly about two minutes. We went directly.

Q. What did you see and hear after you arrived at the garage? What did you do?

A. After arriving at the garage, we immediately went downstairs and the attendants, both of them, were there. There was another fellow which I identified, having remembered his name later as Mr. Donofrio, and I saw the police car at a distance.

* * *

Q. Did you talk to Mr. Donofrio?

A. Not then. I did later, I believe.

* * *

Q. You say you talked to him later? When is "later"?

A. He asked if he was being held for anything. I told him as far as I knew he wasn't, and he came up to the Marshal's office with us, not at our request, but he just tagged along.

[Testimony of Everett Ames.)

Q. What was he doing there, do you know? [263]

A. No, he wasn't doing anything. In fact, I told him myself he wasn't being held for anything.

Q. After arriving back at the garage, what did you do by way of further investigation?

A. Well, I then asked Turner to open the back of the trunk. Arlowe was there at the time, and Engineer Wood was right there, and Turner opened the trunk. I then took the equipment out. There were only those two bags in the trunk both times.

Q. By the two bags, I would like to direct your attention to Plaintiff's Exhibits 5 and 6 for identification. [264]

* * * *

Q. I believe, Mr. Ames, I had directed your attention to the suitcase there, the large one. I will ask you if you can identify that?

A. Yes, I can identify that.

Q. Where did you see that before?

A. I saw that in the back of the Packard convertible coupe the first time.

Q. Is that the bag that you removed from the car? A. Yes, that is the bag.

Q. Did you open the bag after you removed it from the car?

A. Yes, we did. Well, we opened it as we were taking it out, slid it forward and opened it, looked at the equipment, and then we took it to the Marshal's office.

Q. When you looked at that equipment—would

[Testimony of Everett Ames.)

you take a look at that equipment in the bag at this time? Tell us whether it is the same equipment you saw in the bag at the time you opened it.

A. Yes, that is the same equipment that I saw in the bag [265] when I opened it.

Q. What is it?

A. It is a radio transmitter.

Q. Can you describe it more fully?

A. Yes, it is a radio transmitter, it is made by Harvey Wells, Model TVS 50.

A. At the time you found that transmitter, on what frequency was it set?

A. There was a crystal in the front of the transmitter, and on that crystal was marked 3535.6 kilocycles.

Q. In your opinion, is that the same transmitter that was transmitting the signals which you heard?

A. In my opinion, it was.

Q. What did you do with that transmitter?

A. We took the transmitter to the U. S. Marshal's office.

Q. About what time of day was that?

A. We left approximately 3:35, I believe.

Q. When did you arrive at the Marshal's office?

A. About 10 or 15 minutes later. We went directly in the car.

Q. Did you see the defendants at the Marshal's office?

A. Yes, I did, all three. [266]

* * *

C. Concerning the automobile from which you

[Testimony of Everett Ames.)

took the bags, were you able to in any way more specifically identify the car as to ownership?

A. I made a note of the license number at that time. Also, Mr. Arlowe, who was with me the second time I saw the car, had the—took the registration certificate from the car and he showed me so I could observe the name of the owner.

Q. What was the name?

A. It was George LaClair.

Q. George who? A. George LaClair.

Q. LaClair? A. Yes. [267]

* * *

Cross-Examination

By Mr. Pomeroy: [275]

Q. Directing your attention to February 10, you stated, I believe, that after taking Mr. Arlowe up to the room on the twelfth floor and taking this test outside the door of Room 1217, you and Hallock then remained in the lobby for a short period of time after Mr. Arlowe had left to go to the United States Court House, is that right?

A. I don't know whether it was after or not. I left Arlowe there. I went down to the lobby and met Hallock and we stayed around there for a short time. I don't know what happened to Arlowe at that time.

Q. Where did you last see Arlowe?

A. Upstairs on the twelfth floor.

Q. You mean you left there alone when this maid showed up and Arlowe stayed right there?

[Testimony of Everett Ames.)

A. I don't know where Arlowe stayed, but I went down to the eleventh floor and checked the reception down there, and I later went to the lobby, and I didn't see Arlowe again.

Q. How did you know Arlowe went for a warrant?

A. He told me he was going to after hearing the evidence that he testified to.

Q. And that was about 1:46?

A. About that time, I believe.

Q. And then you went down and you stayed for a short time [289] with Hallock in this little areaway which goes to the telephone booths in the Benjaman Franklin Hotel, is that right?

A. That is correct.

Q. Then you left there and went to the FCC office on First and Marion?

A. Yes. We first walked around looking for a telephone and finally decided to go back to the office.

Q. After you returned there you received a call from Mr. Standard, as I understand it. Did you receive that call, or Mr. Hallock?

A. I heard Mr. Hallock talking to Mr. Standard.

Q. And he said that someone was checking out and removing some bags out of this room, is that right?

A. That is what he told me, that the bags were being taken away.

Q. Then Mr. Hallock went directly back up to the Motor Ramp Garage, is that right?

[Testimony of Everett Ames.)

A. Yes, we both went together.

Q. And you arrived there about 2:15?

A. Approximately that time.

Q. Did you before you left the FCC office telephone the Motor Ramp Garage? A. I didn't.

Q. Did anyone that you know of?

A. I don't know. [290]

Q. Tell us whether or not Mr. Hallock or you did not call the Motor Ramp Garage?

A. I did not. I don't know who else may or may not have called.

Q. Do you or do you not know whether Mr. Hallock called the Motor Ramp Garage before you left your office to go up there?

A. I do not know whether he did or not.

Q. You have no knowledge?

A. I have no knowledge.

Q. When you arrived at the Motor Ramp Garage at 2:15, you immediately went with the attendant down into the place where they keep cars in that garage, is that right?

A. I don't recall whether it was immediately, I think it was a very short time later.

Q. What were you doing after you arrived and before you went down, if you didn't go right away?

A. Well, we were talking in that little office there.

Q. Talking to whom?

A. The Motor Ramp Garage, I guess you would call him, attendant Turner.

Q. Mr. Hallock and you and Mr. Turner, is that right? A. Yes.

[Testimony of Everett Ames.)

Q. Was there anyone else present?

A. I believe the other attendant was, I didn't notice particularly whether he was there. He wasn't there all the [291] time, but he may have been in or out.

Q. Tell us what that conversation was that delayed you in getting down to the garage.

A. I can only recall hearing Hallock mentioning something about the case, the fact that this car was being used by people that we were obtaining a warrant for their arrest.

Q. That was told by Hallock to the attendants?

A. I believe it was Hallock that said that.

Q. What other conversation if any do you recall?

A. I don't recall any other conversation.

Q. Immediately after that, you went down to the place where the car was stored?

A. There was a telephone call which I cannot place whether it was before or after I went down.

Q. Who made the telephone call?

A. The telephone call was to our office. Hallock made it.

Q. Hallock made a call to your office?

A. As I recall, yes.

Q. Then you went down to the car, is that right?

A. That is right. [292]

* * *

Q. After 2:15 or 2:20, you then returned, after looking at Plaintiff's Exhibits 5 and 6, as you claim,

[Testimony of Everett Ames.)

in the car, you went back to the office of the Motor Ramp Garage, is that correct?

A. That is correct.

Q. Then you stayed there? A. Yes.

Q. You stayed there until after the arrest of these defendants? A. No.

Q. When did you leave there?

A. I stayed there for a short time, and then I went out to find a policeman.

Q. You went out to find a policeman?

A. Yes, sir. [293]

Q. You knew Mr. Arlowe was down obtaining a warrant of arrest for these men, didn't you?

A. Yes, sir.

Q. And you went and looked for a policeman?

A. Yes.

Q. How long have you been with the FCC?

A. Since 1940.

Q. Did you find a policeman?

A. I did not.

Q. Then what did you do?

A. I went back to the office of the garage.

Q. What was the purpose of your looking for a policeman?

A. I didn't know the nature of the men. We didn't want a riot started.

Q. You mean you were afraid of your personal safety?

A. Yes, also of the safety of the garage, I suppose.

Q. What's that?

[Testimony of Everett Ames.)

A. Also the safety of the garage, we didn't want any disturbance.

Q. You were looking out for the safety of the Motor Ramp Garage?

A. I suppose we just figured it would be a good idea to have policeman in case they started a riot.

Q. You didn't find a policeman and you returned? A. That's right. [294]

Q. Then what did you do?

A. A short time after that a police car did drive up. I went over to the car——

Q. Over to the police car?

A. Over to the police car.

* * *

Q. Then you walked over to the police car? Where did the police prowl car go after it came into the garage?

A. I went on the lower deck and parked a short distance away from the car in question.

Q. How many policemen in it? A. Two.

Q. Seattle City policemen?

A. Seattle City policemen.

Q. What did you tell them?

A. Joe and I told them——

Q. Who is Joe?

A. Hallock. He and I told them of the case, that we [295] expected to make the arrest shortly, and in the event the warrant had not been served and the men did come down for the car, that we were afraid there might be a riot. I don't know if we used those words or not, but we told them that we were going

[Testimony of Everett Ames.)

to arrest them, or follow them. I should say follow them, not arrest them, because we had no way of arresting them.

Q. You were going to follow them, is that right?

A. Yes, and that we didn't want a disturbance there.

Q. Where did the policemen then go?

A. They stayed in the garage, I believe in their car. They were in the car the last I saw them.

Q. Where did you go?

A. I went up to hotel room 1217.

Q. After you talked to the policemen, you then went up to the hotel room? A. Yes.

* * *

Q. Did you at any time from the time 2:15 or 2:20 when you arrived at the garage, request of your office or of anyone a search warrant? [296]

A. No.

Q. Did you make any effort whatever to obtain a search warrant?

A. Engineer in charge Arlowe——

Q. Just a moment. Did you?

A. No, I didn't.

Q. You didn't attempt at any time to obtain a search warrant? A. No. [297]

* * *

[Testimony of Everett Ames.)

Redirect Examination

By Mr. Dore:

Q. You say this crystal in this transmitter was 3536, is that correct? A. 3536, yes.

Q. Does that set the band of frequency?

A. It sets a center frequency of the transmitter. The transmitter occupies a small spread of frequencies. They are called side bands, but the center frequency is determined by the crystal.

Q. You say that on each side of that 3536 there are other bands, as you call them?

A. There are side bands, when voice is spoken into the microphone and the transmitter is modulated voice.

Q. Could you explain to me the reception of energy transmission sent out on 3536 from this transmitter? [300]

A. If you were to explore the band, you would find right at that frequency, 3536, there would be what they call the tower frequency. It is a point frequency, I mean it isn't wide, it is a spot frequency, and then from that out in either direction there is radio energy in what they call the side bands.

Q. In other words, if I had a radio and I set the receiver dial on 3537, say, could I hear a broadcast by a transmitter that was set on 3536?

A. Yes, you could. You would hear it somewhat distorted, but still interchangeable, very interchangeable, I would say.

[Testimony of Everett Ames.)

Q. How many side bands to the side would you say that goes in each direction?

A. Normally, for this type of a transmitter, that would go out for about 4 to 5 thousand cycles on either side, which is 5 kilocycles.

Q. In other words, for a transmitter that had a crystal set at 3536, do you mean by your explanation that I could hear and receive with reception set on my band up to 3541 on one side?

A. You would still hear parts of the signal, provided it was voice modulated with full voice frequencies. However, it would be attenuated, it would get weaker as it got out.

Q. Would the bands on which I could receive extend over to the left to approximately 3532? [301]

A. That depends on the type of receiver. Some receivers are broad, they would cover a wide part of the spectrum. Others are more short. That is determined by the receiver itself.

Q. That would be the same as on my radio at home? A. Yes.

Q. Receiving on a certain frequency?

A. Yes. You may have noticed if you tune from one side to the other of a station you can still hear that station as you tune away from the center frequency.

Mr. Dore: No further questions.

Mr. Pomeroy: No questions.

The Court: Step down.

(Witness excused.)

TILLIE JAMES

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows;

Direct Examination

By Mr. Evans: [302]

Q. Where are you employed?

A. Stratford Hotel.

Q. Where is the Stratford Hotel?

A. Third and Seneca.

Q. Is that in the City of Seattle? A. Yes.

Q. How long have you worked there?

A. A little over a year. Then I took three months off, went and made a trip to Sweden, just came back.

Q. Were you working there during the months of January and February of this year?

A. Yes, I was.

Q. What are your duties in your employment in the Stratford Hotel? A. Hotel maid.

Q. What floors or what rooms generally were you required to take care of during January and February, 1949?

A. All the fifth floor on the Stratford Hotel.

Q. I will ask you whether or not at any time during the first week in February you ever saw any of these defendants in the hotel?

A. I see all them three. Two came and registered but also [303] a third one was with them a lot of the time.

(Testimony of Tillie James.)

Q. Do you recall what day they arrived at the hotel? A. Wednesday morning February 2.

Q. At the time that they arrived, do you recall what room they went to? A. 507.

Q. At the time they arrived, was that room made up ready for their occupancy?

A. No, that wasn't made up.

Q. I will ask you whether or not you made that room up? A. Yes, I did.

Q. Just what occurred at the time you were making that room up?

A. They came and asked me to make this room, and they came and stayed there all the time I was making this room, and told me not to do it so much, "Everything is all right, just make the beds and give us the towels."

Q. Is that normal procedure when you are making up a room?

A. No, that isn't normal proceeding. I never need to go in a room where guests are in the room, especially when a room isn't made before the new guest comes in.

Q. Were all three of these gentlemen here present when they first came in?

A. No, there was only two.

Q. Which two? [304]

A. Them two on the back.

Q. That is the two sitting in the back row?

A. Yes.

Mr. Evans: May the record show that Mr. Casey and Mr. Plesa are seated in the back row as they

(Testimony of Tillie James.)

are now located here in the room. Is that agreeable, counsel?

Mr. Pomeroy: Yes.

The Court: The record may so show.

Q. Thereafter, do you recall how long these defendants occupied that room?

A. They occupied from February 2 till February 5, in the morning or during the night. When I came February 5, the room was vacant, but the beds wasn't used since I made them February 4.

Q. At any time thereafter after you first made the room up did you make the room up again?

A. I made it every day.

Q. Were you ever able to enter the room when there was no one there?

A. No, I never was, when they wasn't in there.

Q. Will you state whether or not there were any directions given you when you would go in to make up the room, on the 3rd or 4th?

A. They always asked me first thing, before I even started to work, before I even changed my clothes, they asked me to [305] make their room, and always the same thing, "Don't be so fussy, the other bed isn't used." There was two beds, but one bed never was used. There were two men registered in the room. They said, "The other bed isn't used, just make up the bed, give us the towels, you don't have to be so fussy," but they never leave the room while I was there.

Q. On any occasion did you notice any of their baggage?

(Testimony of Tillie James.)

A. Well, they had two bags, one was a zipper bag, reddish-brown, and the other one was sort of a light tan or whatever you may call it.

Q. Will you state whether what has been marked for identification as Exhibit 5——

A. There was a bag like that in the room.

Q. That is referring to what has been marked for identfication as Exhibit 5?

A. Yes. Well, there was a bag, of course, I never went any closer. I seen this standing on the floor.

Q. There was a bag that resembled that which is now before you? A. Yes. [306]

* * *

Q. Did they ever make any indication that they were in a hurry for you to get out of the room?

A. Yes, they gave me that all the time.

Q. Will you state whether or not on any occasion you saw any wires in the room?

A. I seen one morning a wire laying on the window sill, but I wasn't close enough to know whether that went out or whether it was just laying on the window sill.

Q. Can you tell us as nearly as you can generally what the wire looked like? Did it look like a piece of bailing wire, light wire?

A. It looked like a piece of radio wire, very narrow radio wire.

Q. Could you tell whether or not it was covered wire or bare wire?

A. I couldn't tell that, because I was being a

(Testimony of Tillie James.)

little bit nervous at being in the room when the mens are in the room. I am not used to that.

Q. At any time did you hear any conversations in this room?

A. Yes. When I was in the other room, making the other room one time, I recall the fellow saying, "Oh, you're nervous," and the answer was, "I'm not nervous, look at my shoulders."

The Court: I don't understand.

The Witness: "Look at my shoulders," and shortly after [307] I heard the voice again say, "Reckon anybody knows anything about us?" Also, the voice say, "Reckon we better pull out of here."

Q. Was that a question or a statement as you heard it?

A. Well, that was in the same statement, it was the conversation I heard when I was in the other room.

Q. Do you recall about what day it was you heard that?

A. I am not sure whether it was the 3rd or 4th, I am not sure what. I think it was on the 4th.

Q. Will you state whether or not you ever heard any conversation with regard to a battery?

A. Yes. When they came in that first morning, there was talking between them, "We got to get a battery."

Q. Who all was present then?

A. The two fellows registered in, and me, I was making the room.

(Testimony of Tillie James.)

Q. What two fellows do you speak of? Are they here in the courtroom?

A. Yes. I don't recall anybody's name, I haven't got no way to know anybody's name, but like I stated, the two fellows registered in.

Q. Can you point out the two fellows?

A. Them two in the back, the littlest one and the stout fellow.

Q. That is Mr. Casey and Mr. Plesa in the back row here? [308] May the record so show, they are the two defendants sitting in the back row?

Mr. Pomeroy: Yes.

The Court: Let the record show that.

Q. On any occasion did you hear any unusual sounds coming from this room?

A. Yes. I also heard, when I was making this room 506, I heard them, "Testing, one, two, three, four, testing, one, two, three, four," repeatedly, for all the length of time I was in this room.

Q. About how long did that go on?

A. 20 minutes maybe 25 minutes. [309]

ANN ALHADEFF

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Evans:

* * *

Q. Are you employed? A. Yes.

Q. Where?

A. At the Benjamin Franklin Hotel; elevator operator. [321]

* * *

Q. Do you recall whether you were working there on February 9 and 10, 1949? A. Yes.

Q. Will you state whether or not you have ever seen these three defendants here, Mr. Casey, Mr. LaClair and Mr. Plesa, around the Benjamin Franklin Hotel? A. Yes, I have.

Q. Do you recall about when they were there?

A. I would say about the 3rd to the 5th, or something like that, I can't recall.

Q. What month? A. February.

* * *

Q. Do you recall at any time having taken one of them from the twelfth floor down to the lobby with any baggage?

A. Yes, sir, but I don't recall which one.

Q. Prior to that, had you seen any of them on the mezzanine floor? A. Yes, two.

Q. Do you recall which two? [322]

(Testimony of Ann Alhadeff.)

A. Yes, Casey and the one in front sitting next to Mr. Pomeroy.

Q. That is Mr. LaClair sitting beside Mr. Pomeroy. A. Yes.

Q. I will ask you whether either one of those went to the twelfth floor in your elevator?

A. Yes, the one did, I don't recall which one.

Q. How long thereafter before that one came back down?

A. I would say from three to four minutes.

Q. At the time he came back down, did he have any baggage with him?

A. Yes, he had two bags.

* * *

Q. Do you recall ever hearing anything about these defendants being arrested?

A. Not till the next day, I saw it in the paper.

Q. You saw it in the paper the next day? [323]

A. Yes, but I don't remember the date.

Q. With relation to the day you saw it in the paper, when was it you took one of these two gentlemen up in your elevator to the twelfth floor?

A. There was one that rang from the mezzanine and wanted to go up to the twelfth floor.

Q. What day was that with respect to the day you read in the paper about their being arrested?

A. I think it was the day before.

Q. Did you take that same person back down again at any time thereafter?

A. When he rang for the elevator, I went up to

(Testimony of Ann Alhadeff.)

the twelfth floor and got him. He rang to come down and he had two bags with him.

Q. Will you describe what the two bags looked like.

A. A large suitcase, blackish-gray, and the other was small, wine, I thing. I think they are in this room.

Q. Will you bring out what has been marked for identification as Plaintiff's Exhibits 5 and 6 and let the witness look at them?

A. Yes, that was one.

Q. Showing you what has been marked for identification as Exhibit 5, will you state whether or not that appears to be—— A. Yes, both of those.

Q. 5 and 6? [324] A. Yes.

The Court: The record does not show which one, when you were referring to which one.

Q. Showing you Plaintiff's Exhibit 5 for identification, will your state whether or not that appears to be one of the bags which this gentleman had with him when he came down?

A. Yes, that was one.

Q. Showing you what has been marked for identification as Plaintiff's Exhibit 6, will you state whether or not that appears to be the other bag which this gentleman had with him when he came down from the twelfth floor? A. Yes.

Q. What was your answer?

A. Well, both of those, Exhibit 5 and 6.

The Court: He was asking you last about Plaintiff's Exhibit 6. Be specific and have the witness'

(Testimony of Ann Alhadeff.)

attention made specific in response to your questions.

Q. Will you wait for your answer until I have asked the whole question? Calling your attention to Plaintiff's Exhibit 6 for identification, which is the article now in the hands of the bailiff, will you state whether or not that appears to be the same bag which the gentleman had, which you have spoken of before, when he went from the twelfth floor down to the lobby?

A. Yes, sir. [325]

* * *

Q. Do you recall about what time of day this was?

A. Yes, it was between 2:15, I think about 2:15 or 2:20, something like that.

Q. Do you recall what date that was?

A. No, I don't recall.

Q. But you do recall it was the day before the day you read in the paper they had been arrested?

A. That's right. [326]

* * *

KARL STUBER

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows;

Direct Examination

By Mr. Evans:

Q. State your full name and spell all of your name for the reporter, please?

A. K-a-r-l E. S-t-u-b-e-r.

(Testimony of Karl Stuber.)

Q. What business are you in?

A. I am a tailor.

Q. During the months of January and February, 1949, where was your place of business?

A. In the Benjamin Franklin hotel building on the ground floor.

Q. Calling your attention to the date of February 7, 1949, do you recall whether or not you had occasion to visit Room 1217.

A. I was upstairs, yes. [327]

Q. I will ask you whether or not you entered that room? A. I did.

Q. Who was present?

A. The three gentlemen there.

Q. That is the three defendants here, Mr. Casey, Mr. LaClair and Mr. Plesa? A. That's right.

Q. What was the occasion of your visit there at that time?

A. I was called upstairs to get the cleaning. They had some cleaning to be done and some alteration of some garments which they bought someplace else in town a day or two before. I was up there for the purpose of doing alteration and fitting, which I did.

Q. At that time, will you state whether or not there was any discussion about samples, for your making a suit for them?

A. Yes, they were asking me if I made suits. I says, "I do," and one of the gentlemen told me if I had a sample case. I says, "I have," and he told me to bring the samples up.

(Testimony of Karl Stuber.)

Q. Do you know whether or not all three of these gentlemen were living in that room at that time?

A. I don't know if they were living there, but they were there when I was up there.

Q. While you were there, will you state whether or not any food was brought to that room? [328]

A. Yes, they had breakfast.

Q. Do you recall whether or not it was breakfast for just one or two or all of them?

A. I think it was for three.

Q. Later on, on February 7, did you again at any time go to Room 1217? A. Yes.

Q. What if anything did you take with you?

A. My sample case.

Q. Do you recall about what time of day that was? A. That was around 2 o'clock.

Q. I will ask you whether or not you left the sample case there? A. I did. [329]

* * *

Q. I will ask you whether or not on any other occasion you ever returned to that room?

A. I did.

Q. What day was that?

A. It was—I am not sure if it was Wednesday or Thursday. Anyway, it was the day before the gentlemen were arrested by the Federal Communications. I think it was on Thursday, if I am not mistaken. It was the same afternoon, because I read the following morning that they were picked up the

(Testimony of Karl Stuber.)

same evening. If I am not mistaken, it was on Thursday.

Q. Do you recall what day of the month it was that you read in the paper they had been arrested?

A. It was February, I think it was on a Thursday.

Q. Do you recall the date?

A. Was it the 10th, or—I am not sure on that now.

Q. Your best recollection is what date?

A. It was the day before I read it in the papers. I read it the following morning, their picture was on the front page of the P. I.

Q. What I mean is, do you have any recollection, and if so, what is your best recollection as to the date?

A. I think it was Thursday. The data, I don't know. [330]

* * *

ROBERT DIETSCH

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore:

Q. Where do you work?

A. I am an engineer for the Federal Communications Commission. [331]

* * *

(Testimony of Robert Dietsch.)

Q. Were you employed by the FCC on or about February, 1949? A. I was.

* * *

Q. On or about that time, were you assigned to the investigation of this case? A. I was.

Q. Who assigned you to this case?

A. Engineer in charge, Mr. Arlowe.

Q. To what duties were you assigned? What orders did you receive?

A. On February 5, at his direction, I was instructed to take monitoring equipment in the form of a portable receiver and go aboard a United States Coast Guard cutter.

Q. Do you recall the number or name of that cutter?

A. No, I do not. It was a Coast Guard cutter that was based at the bottom of the Spokane Street bridge. As I was saying, I was instructed to go aboard this Coast Guard cutter [332] and proceed out into the navigable waters of Puget Sound, out into Elliott Bay.

Q. Did you do that? A. That I did.

Q. At what time of the day or night?

A. It was on Saturday, February 5, approximately 12:30 that we left the dock, 12:30 noontime, p.m.

Q. Having come aboard ship, where did you proceed?

A. The vessel proceeded down the waterway, the east waterway and then out into Elliott Bay approx-

(Testimony of Robert Dietsch.)

imately two miles north of Duwamish Head, which would put us abreast of Pier 91, or slightly a little further north towards the Government locks. We were out in the regular ship channel.

Q. Did the vessel lie to or anchor?

A. No, the vessel proceeded in circles in that general area.

Q. What equipment did you have with you at that time?

A. I had what is known as a Hallicrafter S 29 receiver, a portable receiver with self-contained battery supply.

* * *

Q. Having proceeded to the place you have designated, [333] approximately two miles north of Duwamish Head, what did you do upon arriving in that vicinity?

A. Prior to leaving our office, I had calibrated the receiver for the frequency upon which we had been receiving these unidentified radio signals, so on arriving at approximately the distance I had in mind, I turned the receiver on and listened for these unidentified signals.

Q. What was your calibration on your receiver?

A. It had been calibrated for 35.36 kilocycles.

Q. Will you tell us what you did, what you heard, and what you saw?

A. I listened and at first I heard nothing. Then at approximately 1:45 p.m., I heard, "Testing, one, two, three, four."

(Testimony of Robert Dietsch.)

Mr. Royce: If the Court please, this witness—is it understood that our objection to any testimony as to the broadcast claimed to have been made by these defendants is saved? I understand we have a continuing objection.

The Court: Is there any objection to it applying to this witness' testimony?

Mr. Dore: I am not certain, Your Honor, whether the objection is in point at this time. I don't believe it is in point at this moment.

The Court: Until it becomes clearer, will you state your objections as they may occur? [334]

Mr. Royce: I will restate the objection. In the first place, if this witness is going to testify as to a broadcast that does not claim to be broadcast by these defendants, the objection is that the evidence is not material. If this witness is going to testify as to a broadcast claimed to be made by these defendants, then we object to the testimony on the ground it is barred under Section 605, Title 47, USCA, and we objected all along to testimony of this nature. Your Honor has overruled the objection, but we would like to have a continuing objection. We want to be sure we have it to preserve the record, also, our motion to strike all testimony of this nature.

* * *

Q. I believe my last question was to what calibration had you set your receiving equipment?

A. To 3536 kilocycles, approximately.

(Testimony of Robert Dietsch.)

Q. Is that the band upon which you had heard the previous unlawful signals you had heard? [335]

A. This was the frequency upon which we had been hearing it at our monitoring room in the office.

* * *

Q. What time?

A. These signals, the first group was heard from approximately 1:43 to 1:46. Then there was a period of silence in there of approximately 25 minutes, and then the signals were again heard from approximately 2:12 to 2:16.

Q. Do you remember the band upon which you received those signals at 1:43 to 1:46?

A. 3536 kilocycles.

Q. Between 2:12 and 2:16 was it—

A. Yes.

Q. What band?

A. That again was the same band, 3536 kilocycles. [336]

Q. Do you remember whether this was a one-way or two-way signal?

A. It was one-way transmission.

Q. Do you remember the language of any of the messages? A. Yes, I do.

Q. Would you give us the times and the language that you heard?

A. The time, the first message at approximately 1:45, went somewhat as follows, "Testing, testing, one, two, three, four, do you hear me, they are

(Testimony of Robert Dietsch.)

running at Santa Anita, they are running, they are running." "They are running" went on for approximately 16 times, and at the end of that it said, "66, War Again; 66, War Again." The second message, approximately 20 minutes later, was substantially the same nature, "They are running at Santa Anita, they are running, they are running," but this time the name of the horse was Annapolis Air. [337]

* * * *

Q. Was anybody present with you when you heard this?

A. Yes, on the first transmission as soon as I heard it, I had earphones on, and I divided the earphones in half and gave one-half to Byron Hess.

Q. Who was he?

A. He was the enlisted personnel of the United States Coast Guard cutter.

Q. Is he is in the courtroom today?

A. Yes, he is.

Q. Approximately what time did you give him that other earphone?

A. That was approximately halfway through the broadcast, when they were saying, "They are running, they are running." I handed him the earphone.

Q. You say that is all you heard and then you returned to the base, is that correct?

A. That is correct, made two observations. [338]

* * *

(Testimony of Robert Dietsch.)

Cross-Examination

By Mr. Pomeroy:

Q. Mr. Dietsch, while you were aboard this Coast Guard cutter, did any of the equipment of that organization — was any of that used in attempting to intercept this broadcast?

A. No, sir.

Q. Yours was the only piece of equipment?

A. That is correct.

Q. There is another receiving device aboard the Coast Guard cutter than the portable unit which you took aboard? A. Yes, sir.

Q. But that wasn't used at any time throughout your attempt to hear any broadcast? A. No.

* * *

BYRON HESS

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore: [340]

* * *

Q. What is your occupation?

A. I am in the Coast Guard.

Q. What is your rate or rank in the Coast Guard? A. Seaman first class.

Q. How long have you been in the Coast Guard?

(Testimony of Byron Hess.)

A. Over two years.

Q. What are your present duties in the Coast Guard, and to what ship are you assigned?

A. I am assigned to the Coast Guard 64314. My duties are as seaman aboard.

Q. How many officers are aboard that ship?

A. There are no officers.

Q. How many enlisted men?

A. Well, about three.

Q. Were you stationed aboard that same ship on February 5, 1949? A. I was.

Q. Do you remember Mr. Dietsch, who just testified this morning, aboard the ship? A. Yes.

Q. Do you remember about what time he came aboard? A. About 12:30.

Q. What occurred after he came aboard? [341]

A. He brought his radio gear aboard and we shoved off immediately under his orders as to where he wanted to go, and we laid off of Duwanish Head.

Q. About how far off Duwanish Head, would you say?

A. About two miles north, a little northwest, perhaps.

Q. Then what occurred?

A. He started tuning in his gear, sat there and listened to it for quite a while, finally got transmission and called me out, and Butler. We both went out and listened.

Q. How did you listen?

(Testimony of Byron Hess.)

A. He had earphones there.

Q. Did you have one earphone and he have the other? A. Yes.

Q. What did you hear at that time?

A. "They are running at Santa Anita, testing, one, two, three, four," and stuff like that, the same thing. [342]

* * *

EDWARD SCULLY

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore: [343]

Q. What is your business or occupation?

A. I am a deputy United States Marshal for the Western District of Washington.

Q. Were you so employed on or about February 10, 1949? A. I was.

Q. Did you on that day see these three men?

A. I did.

Q. Where did you see them?

A. In Room 1217 in the Benjamin Franklin Hotel.

Q. At about what time of the day or night?

A. Shortly after 3 o'clock in the afternoon.

Q. Under what circumstances did you see them?

A. I had a warrant for the arrest of those three gentlemen.

(Testimony of Edward Scully.)

The Court: What date was that?

The Witness: February 10, Your Honor.

Q. At about what time did you receive that warrant?

A. Well, I was out and I came in the office, it was just about 3 o'clock or a few minutes after, and Mr. Miller handed me three warrants and these gentlemen's names were on it. They told me where they were.

Q. What did you do upon receipt of that warrant? [344]

A. Mr. Arlowe was in the office at the time and he said, "I have a car, I will take you up there," so I went up with Mr. Arlowe.

Q. About how much time did it take to get over to the Benjamin Franklin Hotel?

A. That is at Fifth and Virginia, that isn't many blocks. I wouldn't say over five minutes or so.

Q. Upon arriving at the Benjamin Franklin Hotel, what did you do?

A. Well, I was informed that these people were in the lobby, and the lobby was quite full of people. I spoke to Arlowe and I said, "What room are they in," and he said 1217. I took the elevator and went up to 1217.

Q. Upon arriving at the door of 1217, what did you do?

A. I rapped at the door and a voice inside said, "Who is it," and I said, "A deputy United States

(Testimony of Edward Scully.)

Marshal," and I think Mr. Casey was the gentleman that opened the door. He opened it right away.

Q. By Mr. Casey, who do you mean? Could you point him out, please?

A. I think the gentleman alongside of Mr. Pomeroy. I am quite sure it was he who opened the door.

Q. Would you stand up, Mr. Casey? Is that the gentleman? A. I am quite sure it was.

Q. Then what happened? [345]

A. Well, I identified myself, told them that I was a deputy United States Marshal and that I had warrants for these three people. Casey said, "I'm Casey," and I read the warrant to him and he took it. Mr. Plesa was next and he was surprised and said, "Well, what is all this about," and I said, "You are now a Federal prisoner." Then I looked around for LaClair and very shortly he stepped up and says, "I am LaClair." He says, "Well, what is the procedure." I said, "You are now a Federal prisoner." [346]

* * *

Q. What time did you say you went into the room?

A. Right close to 3:00 o'clock. I had been out on another detail. I came in about 3 o'clock and Mr. Miller gave me the warrants immediately and said to hurry up, there was a policeman holding

(Testimony of Edward Scully.)

somebody or something, so I went right up there with Mr. Arlowe. [347]

* * *

Cross-Examination

By Mr. Pomeroy:

Q. If his testimony is to the effect that you arrived at the Benjamin Franklin Hotel about 3:20, would you say that would be about correct? [349]

* * *

A. Well, five minutes one way or the other, it could have been 3:15, it couldn't have been 3:30, but along close there. [350]

* * *

JOSEPH HALLOCK

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore:

* * *

Q. What is your business or occupation?

A. I am a radio engineer with the Federal Communications Commission.

Q. What has been your education or experience in that field?

A. Well, I have been in radio as a livelihood since I left college in '13, and somewhat before that

(Testimony of Joseph Hallock.)

in the summertime [351] as a radio telegraph operator. I have been in radio in one form and another.

Q. Do you have any degrees in engineering or training of that nature?

A. No, I only finished junior year in electrical engineering. I lost out one year.

Q. How long have you been with the Commission? A. Since September of 1935.

Q. What do your duties entail there?

A. At present I am assistant to the engineer in charge, Mr. Arlowe. I have been in this office for slightly over three years.

Q. Were you employed by the FCC on or about February of 1949? A. I was.

Q. What were your duties and assignments at that time?

A. Mr. Arlowe assigned me with Mr. Ames and asked if I would drive Mr. Ames, who was going to take bearings on these signals.

Q. Did you do that?

A. Yes, I drove continuously for him while we took these bearings, from September 3 to and including the 9th. I should say February 3.

Q. Were you with Mr. Ames during all that time when the plottings were made? [352]

A. I was.

Q. Where was Mr. Ames in relation to you? This was the mobile unit, was it?

A. Yes. He operates from the rear compartment. We have quite a lot of gear in there. It

(Testimony of Joseph Hallock.)

is rather cumbersome and occupies considerable space. He works in the rear of the car. Of course, I was in the driver's seat, and the control for the loop, the direction finder, comes down just about amidships, both ways, as to fore and aft, and tweenships, just about in the center, which is somewhat ahead of the rear seat.

Q. Did you actively participate in the taking of any S meter readings or taking of any radio loop direction findings?

A. Only to the extent that a couple of times when we sighted on the Benjamin Franklin we knew that — we felt certain that we might be in sight, these men might see us, so he would snap the loop in quickly—you can pull it out in a second, it is a small loop — turn it without seeing it, and I would sight through it so we could get a visual bearing in the minimum of time. So he would take the loop inside, take his azimuth bearing on the small scale, and I would sight through and find I was looking at the Benjamin Franklin Hotel. I remember doing that a couple of times.

Q. Was this equipment, was the loudspeaker equipment in the car so that all in the car could hear, [353] or could only Mr. Ames hear?

A. We used the loudspeaker most of the time. As I recall, we had the loudspeaker a great deal of the time, and on bearings, though he generally used the headphones where we had a little more time and he was taking a little more accurately. We could and did use either and both.

(Testimony of Joseph Hallock.)

Q. Were you with Mr. Ames on the 3rd and 4th? A. I was.

Q. Were you with him on the 5th?

A. I was.

Q. Were you with him on the 6th?

A. I was.

Q. And the 7th? A. Yes.

Q. How about the 9th and 10th?

A. All of those days.

Q. Did you hear any unlawful messages or signals broadcast during that time?

A. Yes, continuously each day. That is to say, the 3rd, 4th, 5th, no signals on the 6th, which was Sunday, and the 7th, particularly a lot on the 7th. Then the 8th, there was no races, no signals on the 8th, and then the 9th, and then just very slightly before we made the arrest on the 10th, one race on the 10th.

Q. Were these one-way or two-way signals?

A. They were all one-way.

Q. Were they a man's voice or a female voice?

A. All men's voices.

Q. Was there anything peculiar or distinct about pronounciation or the language used?

A. One of the men used the phrase "homodulation" a great deal for modulation, seemed to give the impression there was an h in front of the word modulation. We all commented on that. It sounded more like homodulation.

(Testimony of Joseph Hallock.)

Q. Do your know upon what band these transmissions were received?

A. The first day was approximately 3936 kilocycles, but all the rest thereafter were 3536 kilocycles. That is the actual spot frequency itself.

Q. In the interest of saving time, I will ask you if these transmissions which you heard over this period of days, were they similar?

A. Very, very much so.

Q. What similarity was there?

A. Well, the normal procedure, as has been told many times, they used "Testing for modulation, one, two, three, four," many, many times. I don't recall them ever saying "one, two, three, four, five," or "one, two, three," but it was "one, two, three, four," over and over again, and the typical phraseology would be, "We are waiting for Santa Anita, we are waiting for Santa Anita," many times. Then, "They are ready at Santa Anita," many times, and "They are running at Santa Anita," many times, and that went on for quite a while. Once in a while they would use the phrase, "The stretch, the stretch," but not particularly often. And then, "It's No. 9, Blue Boy, No. 9, Blue Boy," or whatever the winner was.

Q. Was there any identification of originator or the addressee of any of these messages?

A. No, not from the message standpoint. On the 7th, particularly when they did a great deal of testing in the afternoon, appeared to be using that

(Testimony of Joseph Hallock.)

afternoon for tests, they used the names many times of Casey and Ralph, and Joe a couple of times.

Q. That was on the 7th?

A. Yes, and various other days we heard Ralph and Casey.

Q. Do you remember the time on the 7th?

A. Well, the normal procedure, generally opened up, post time seemed to be right around 1 o'clock sometime, and they generally started about 1 and ran through till 3, depending on how many races there were playing, generally four or five.

Q. Was that true of the pattern on other days, too?

A. Monday they were doing a great deal of testing with these boys around town. They weren't in the actual mechanics of the race then. They had these boys walking around. [356]

* * *

Q. Did you at any time prior to the 10th see any of the three defendants?

A. Not to my knowledge.

* * *

Q. Did you hear any signals during the night of the 7th?

A. Yes, the one night that I did. I was home, and we had been doing this consistently since the 3rd, and they had been jumping from one hotel to another, so I thought maybe they were using the night time for a set up at a new hotel, so I

(Testimony of Joseph Hallock.)

decided to turn on my own home receiver, which is a [357] three band receiver.

Q. Did you do that? A. I did.

Q. On what band frequency?

A. I set it on 3536, as near as I could guess from my dial, which is reasonably close, although not absolutely accurate, hoping it might pick them up if they came on.

Q. Did you intercept any signal?

A. I did, very shortly after I turned it on.

Q. Was that a voice or code signal?

A. Voice signal, with the same characteristics as we heard in the afternoon.

Q. What was the language of the message that night, if you recall?

A. It started out with the normal, regular procedure, "Testing for modulation, one, two, three, four," a great many times. And I recall them saying, "Call before you come in, I want to do something about the tailor," and then he said, "Call if you can, Joe," and he said, "How is it, Ralph." One time he said, "Is everybody happy," and another time he said, "Take a cab and go to Rendezvous B," and then one time he said, "This is CB 5," I believe that is the phrase he used. I think the final thing we heard was just "Hang on," I believe he said "Hang on," several times.

Q. Would you say that was a similar voice as you had [358] heard before? A. Yes.

Q. Could you set the time of that broadcast?

(Testimony of Joseph Hallock.)

A. My notes show approximately 7:21 to 7:45, along in there. That isn't extreme accuracy, that is the notes I had made.

Q. How did you ascertain that time?

A. Just a little clock at home, which I think was reasonably accurate.

Q. During what period of time did that message go on that you received?

A. Well, as I say, it spread from 7:20 to 7:45, but a great deal of it, as has been told you before, is a lot of time testing for modulation, and perhaps there will be considerable breaks, so that it isn't solid talking all that time.

Q. I will ask you if you were involved in the investigation on February 10, 1949?

A. Yes, I was.

Q. With whom were you operating on that day?

A. I was with Mr. Ames, as usual, in the car, after we were certain two days before that it was the Benjamin Franklin Hotel, so we were circling right around it at post time when they came on.

Q. What time was that?

A. Approximately 1 o'clock, a few minutes after. I [359] think it always was about that time.

Q. About 1 o'clock? A. Yes.

Q. You circled around, you say. Then what did you do?

A. We were circling the hotel, waiting for them to come on, because we were positive it was the hotel and they wanted to do a little pin pointing,

(Testimony of Joseph Hallock.)

so as soon as they came on, I recall we made about one or two circles with our S meter, a little instrument that indicates the volume on a needle; instead of just hearing it, it indicates it.

We circled it and then I went to park the car and Mr. Ames went on into the hotel to look through the various floors. I think I am right, I don't believe he walked around any more. I believe he went directly into the hotel.

Mr. Pomeroy: I think he should testify to what he knows and what he did, not to what Mr. Ames did.

The Court: The objection is sustained. Be certain, Mr. Hallock, to state only what you observed.

A. Mr. Ames either then or very shortly thereafter went into the hotel to explore on the various floors.

Q. What did you do?

A. I went into the lobby, the lower part, and I was keeping contact, phoning the office to see if there was any new developments down there, sort of contact man below.

Q. What occurred? [360]

A. So much occurred that—

Q. You say you were acting as contact man, you were near the telephone?

A. Yes. Mr. Arlowe was down at the office, I think, seeing if we could get a John Doe warrant without having the names, if I remember correctly, and found that it couldn't be done without actually

(Testimony of Joseph Hallock.)

having the names, which, of course, we didn't have. Mr. Ames went upstairs to see if he could spot what room they were in with his very small concealed receiver which he had then put on, by the way, and he had a hearing aid, something we had made up for the purpose very hurriedly, and we didn't know to what extent it would be sufficient.

Mr. Pomeroy: I will object to this as not being responsive.

The Court: That is sustained. Ask him another question.

Q. What did you do?

A. I stayed in the hotel lobby and asked the telephone operator if—

Mr. Pomeroy: I object to this on the ground it is hearsay, not in the presence of the defendants.

The Court: Do not say what you said to the operator or what she said to you. You can say what you did.

Q. What did you do?

A. I stayed in the lobby of the hotel where I——

Q. I might rephrase the question. What did you see or hear while you were in the lobby of the hotel?

A. I talked to the telephone operator, and if I am saying this correctly, asked her if she—

Mr. Pomeroy: I object to this, if the Court please.

The Court: You cannot say your words stated to her. You cannot relate the words which you

(Testimony of Joseph Hallock.)

spoke to her. You cannot relate here the words which she spoke to you. You can say what you did and the actions you took.

Q. What actions did you take?

A. I satisfied myself from conversation with the telephone operator—

Mr. Pomeroy: I will object to this, if the Court please, about satisfying himself. He has been through these things before.

The Witness: I am trying to cooperate.

Mr. Pomeroy: Just a moment. The Court will rule.

The Court: The objection is sustained.

Q. Did you while in the lobby see any of these three men?

A. I did not.

Q. When did you see these three men?

A. Only here. I know they were down in the Federal Court House after I was down there, but I was in and out and I wouldn't know them.

Q. Did you go up to Room 1217? [362]

A. I did not.

Q. Were you there at any time before or after the arrest?

A. I shortly left the hotel and went back to the office.

Q. Why did you go back to the office?

A. After the arrest.

Q. Why?

A. Because Mr. Ames and I—I beg your pardon, not after the arrest, either, but before the

(Testimony of Joseph Hallock.)

arrest, after he had spotted the room. Then he came on down and met me in the lobby, because we had been coming in and out; Mr. Arlowe had been in and out, and so forth. Mr. Ames came downstairs, met me in the lobby. He then knew what room the boys are in, so we said, "There is no use staying here now and making ourselves conspicuous, and perhaps they will get away before we can get the warrant," so we decided to go back to our own office.

Q. What time did you leave the hotel?

A. I suppose in the neighborhood of about 2:30, on a guess, somewhere in there.

Q. About what time did you arrive at your office?

A. We drove right back. We went and got our car, which was only a block away, drove right back, so that we must have gotten back there in five minutes or so.

Q. How long did you remain at the office?

A. As soon as I got there, I learned that Mr. Arlowe was [363] out trying to get the warrant, so I called Mr. Standard, the assistant manager at the Benjamin Franklin, and said, "Have you any news at all," just thinking that these men, whoever they were, we didn't know at this time, might be trying to get away, and he said in effect that he knew they were going to check out, he got the impression they were going to check out, but he was going to hold their car stub, the garage stub for their car, because they owed him a sizable bill.

(Testimony of Joseph Hallock.)

Q. What did you do in response to that call?

A. So I said, well, that would be—something to the effect that it would be—

Q. I asked you what you did in response to that call?

A. I asked him where the car was. He told me it was in the Motor Ramp Garage, directly behind them. So I then called up the Motor Ramp Garage and asked them, told them that we were just in the process of getting a Federal warrant and I was a Federal officer, and the warrant was just about to be served, and would they be willing to do something to hold that car, do something to it mechanically so if these men came before the warrant reached us, they couldn't use the car.

Q. Did you go up to the garage? A. Yes.

Q. When did you go there?

A. Immediately after he said that he would hold the car. [364]

Q. What time did you arrive at the garage?

A. It is hard to reconstruct; I suppose, on a guess, 2:45, something like that.

Q. What did you do upon arriving at the garage? What did you see and what did you hear?

A. Mr. Ames, when I said I was going up to the garage, in case these men showed up, maybe I could hold them by saying there was to be a warrant for them, Mr. Ames drove and we went up as fast as we could to the garage. He went on to park the car. I went in and immediately introduced

(Testimony of Joseph Hallock.)

myself to the attendant there and told him we expected momentarily some men to come here to get the car, and we were in the process at the very moment, waiting for a Federal warrant for the arrest of these men.

I said it was my hope in coming there that I could tell them I was a Federal officer and attempt to hold them pending this warrant, so he said, "All right, we will cooperate," or something to that effect. Meanwhile, Mr. Ames had come back from parking the car, so Mr. Ames immediately went down to the lower floor of the garage.

Q. Did you go with him?

A. I did not. I stayed on the upper floor.

Q. What did you do?

A. I stayed on the upper floor waiting in case these men or someone came for the car. [365]

Q. Did anybody come for the car?

A. Not at that time.

Q. Did anybody later come for the car?

A. Yes.

Q. When? A. Mr. Donofrio, later.

Q. Did you see him? A. Yes.

Q. Did you hear him speak? A. Oh, yes.

Q. Did you speak to him? A. Yes. [366]

* * *

Q. You say somebody came for the car, a Mr. Donofrio? A. Yes.

Q. Did you see him come for the car?

A. Yes, I saw him come down with the attendant,

(Testimony of Joseph Hallock.)

come down the ramp with the attendant, that is, he came in the upper floor and I was on the lower. When I first saw him he was coming down the ramp with the attendant to get the car.

Q. Was anybody with him other than the attendant? A. The attendant.

Q. Did you see the car at any time along with him?

A. No, we were already down on the lower floor, the two policemen and I, on the lower floor, keeping this car in sight.

Q. Where was the car in relation to you and the two policemen?

A. About 10 or 20 feet away.

Q. Was anybody in the car at that time?

A. No, not until they came.

Q. Who came?

A. Donofrio and the attendant.

Q. Did you see them approach the car?

A. Yes.

Q. What did you see at that time?

A. As soon as they approached the car, the two policemen [367] and I came out and I questioned Donofrio, standing in front of this car.

Q. Then what occurred?

A. I asked him what he knew about this.

Mr. Pomeroy: Objection.

The Court: Sustained.

Q. What occurred, not what was said?

A. We talked back and forth for a while, and

(Testimony of Joseph Hallock.)

it was agreed that we had no warrant for him, but he would voluntarily come down with us some few moments later to the United States Court House.

Q. Were you there when Mr. Ames arrived?

A. Yes.

Q. When did he arrive?

A. He came over right after the arrest, I guess it must have been almost immediately after, with Mr. Arlowe and Mr. Wood, also of our office, if I remember correctly.

Q. What time did they arrive there?

A. It must have been about 3:30 or slightly thereafter.

Q. Did you see them search the car?

A. Yes.

Q. Tell us about that.

A. The equipment, which Ames had already seen, as he told you, sometime earlier in the afternoon, the equipment was still in the car, so Mr. Arlowe took it out and they took [368] it down to the United States Court House, and Mr. Donofrio went down with someone else and myself. The three of us, one of the boys and myself, we all went down there.

Q. I will direct your attention to Plaintiff's Exhibits 5 and 6 and ask if you can identify those?

A. Yes, I would say that is the same bag that we took from the car, and the same hat box that we took from the car.

Q. Did you look at the contents of the hat box at that time? A. I did, yes, sir.

(Testimony of Joseph Hallock.)

Q. Did you notice what crystal was inserted, what band crystal was inserted in the transmitter at the time you saw it?

A. It was 3536, and the 3936 was with the gear somewhere, but it wasn't in the transmitter. We commented on it.

Mr. Dore: Your witness.

Cross-Examination

By Mr. Pomeroy:

Q. You called the Seattle police into this case?

A. I called them.

Q. Where did you call them from?

A. I called them from a pay phone there at the Motor Ramp Garage, just outside of their office.

Q. Why did you call them?

A. Mr. Wiltse, the regional manager, suggested I do so because the warrant had been issued when I called in. [369] I might say this, if I may, it doesn't have any bearing, but my thought in going up there was, as I say, if someone came perhaps we could say, "We are holding you for a Federal warrant," but we knew it didn't yet exist. So when I got up there I called up our office to see if the mechanics of issuing the warrant had been completed and the warrant was in existence and I could say, "I am holding you on a Federal warrant," or attempt to hold them.

When I called the first time the warrant did not exist. They said Mr. Arlowe was meeting some

(Testimony of Joseph Hallock.)

delay in the deputy coming in, or something. When I called a second time, a little later, Mr. Wiltse, said, before I asked him, he said, "I have just heard from Arlowe. There is now a warrant, so you can tell anybody the warrant exists. That being the case, I would suggest you call a couple of local police in, in case you have some trouble."

Q. They were to assist you?

A. That is right, in case there was trouble.

Q. When Mr. Donofrio came down, was he searched?

A. No, I don't recall any search. He immediately took out his wallet, they asked for identification.

Q. Who asked for identification?

A. I think the officer did, or I did, one or the other. I think the officer did.

Q. Either you or the Seattle police officer asked for [370] identification?

A. Yes. I think as we first walked out one of the officers said, "Do you know this man," to me, and I said "No." He said, "Can you identify yourself," or something, and he broke out his driver's license, spread it out like this.

Q. Did anybody go through his pockets, pat his clothes and so forth?

A. I would certainly say not. I wouldn't swear to that, but I don't have the vaguest recollection of that.

Q. Are you sure that is true, nobody did this?

A. I would say that is true.

(Testimony of Joseph Hallock.)

Q. As a matter of fact, do you recall patting him, pulling a newspaper out of his pocket?

A. No, I recall lifting it out, I was just going to say.

Q. Who did that?

A. I think I possibly did. It was sticking out like this, a racing form, right out of his pocket.

Q. You took that out of his pocket?

A. I think I did. I wouldn't say I did, or someone else.

Q. What right did you or anyone else have to do that?

Mr. Doré: I object to that as argumentative.

The Court: The objection is overruled.

A. I suppose none, but I recall this. I said to Mr. Donofrio, "What do you know about this case," something like that, and he said "Not a thing" and just about then I saw [371] this big racing form and I think I pulled it out of his pocket. I probably did.

* * *

Q. Did you know that car sitting down there had the rotor taken out of the motor?

A. Yes. That is, I assumed it did.

Q. Tell the Court and jury what you know about that?

A. As I told the attorney here, when I called up——

Q. I didn't ask you what you told the attorney.

(Testimony of Joseph Hallock.)

I want to tell the Court what you know about a rotor coming out of the engine.

A. I asked the attendant if he would be willing to put that car on the bum so it couldn't be used temporarily, and to hold it until we got this warrant, and he said, "You bet your life I would." I think he or someone later mentioned he lifted the rotor out, just a common thing.

Q. When you made that call for the purpose of stopping that car, Mr. Arlowe was then up at the United States Court House attempting to get a warrant?

A. Yes, he was here getting it. He was in the process of getting it, yes. [372]

Q. Was there a notice put on the windshield of this automobile by you or anyone that was under your jurisdiction or control?

A. Not to my knowledge. But just when you speak of that, while it occurred to me, I think I remember vaguely seeing a piece of paper on the front of that car. Now that you speak of that, that is the first time I remember. I didn't see the paper, but I seem to remember it sticking under the windshield, a piece of paper.

Q. You don't recall what was on that paper?

A. No, but since you mention it, it seems it was a colored piece of paper.

* * *

Q. What you did was ask this attendant to put the car out of commission?

(Testimony of Joseph Hallock.)

A. I did. I said, "If you would be willing to do that, that would help us on a Federal warrant," and he said, "You bet your life."

Q. And you took this paper out of Donofrio's pocket?

A. I think I did. I will take the credit or blame, if such is due. It might have been one of the officers, but I think I did. It said in big letters "Racing form," He said, [373] "I don't know a thing." I said, "But what is that," or something like that.

Q. You weren't arresting him, were you?

A. No. We made it clear we had no warrant for him.

Q. You had no charge against him for anything?

A. That is right. We made it clear, very much so. He was talking voluntarily, and he said very little, he didn't know anything about it but he would come down voluntarily with us.

Q. You are telling the Court and jury that Mr. Standard told you these boys owed a substantial bill at the Benjamin Franklin?

A. That is what I recall, yes, sir.

Q. And they were going to hold the car for the bill?

A. He was holding the stub, I believe, if I remember correctly, holding the garage stub until the bill was settled.

Q. Did he tell you also that they were checking

(Testimony of Joseph Hallock.)

out and that they had baggage taken out to their car?

A. I don't believe he mentioned anything about the baggage. I think he said some such phraseology as they looked rather nervous, or something, and they were going to check out, or something not particularly definite, but he thought they were going to.

Q. Did he tell you they ordered their baggage to be taken out to their automobile? [374]

A. No, I don't remember that. I don't know how they could, because the automobile was in the garage at this time.

Q. I want you to read the affidavit of Mr. Everett K. Ames. Beginning on Line 22 of Page 1 of that affidavit, will you read that sentence beginning with the words, "Shortly thereafter?"

A. "Shortly thereafter the office received a telephone call from Mr. Standard, assistant manager of the Benjamin Franklin Hotel, reporting that the occupants of Room 1217, Ralph Casey, Edward Plesa and George LaClair, were checking out and that they had ordered their baggage taken to their Packard automobile located in the Motor Ramp Garage at Sixth Avenue and Westlake."

Q. If you will look at the next page and notice the date of that affidavit?

A. This is the 25th of August.

Q. That was last week, is that right?

A. Yes.

(Testimony of Joseph Hallock.)

Q. Mr. Ames wrote that, he was referring to the telephone conversation that you had with Mr. Standard, is that right? A. That is right.

Q. Where did Mr. Ames get that information he put in that affidavit?

A. I suppose because he was standing there in the office with me. [375]

Q. Didn't you tell him about the conversation you had?

A. He was right there, as I remember, standing right by my desk.

Q. Didn't you tell him about the conversation?

A. Oh, naturally.

Q. Therefore, you told him what he has put in this affidavit?

A. I might have, but I certainly don't recall about the baggage. I am just giving the best recollection, I don't recall whether the baggage was mentioned by Mr. Standard. Mr. Standard is here and he will no doubt tell you, but I can't recall.

Q. Please just answer the question. Were you in the room when Mr. Ames testified? A. Yes.

Q. Did you hear his testimony about your going back to your office shortly prior to 2 o'clock in the afternoon? A. Yes.

Q. And your testimony now is that you went to the office at 2:30. Which is correct?

A. I don't know, counsel, I couldn't tell you. It was seven months ago. Within half an hour. I don't know.

(Testimony of Joseph Hallock.)

Q. You don't recall?

A. I certainly do not.

Q. But at least you stayed in your office for some considerable period of time? [376]

A. Well, I don't recall that it was very much, because I called Mr. Standard and then I immediately called this garage.

Q. Then you went back to the garage, didn't you? A. Yes.

Q. How much time did you spend in the garage before Mr. Donofrio showed up?

A. Well, it must have been quite a while.

Q. How much, would you say?

A. Without anything to connect it to, it seems to me that I would guess it between 30 and 45 minutes.

Q. Possibly longer? You sat in the prowl car for a while, too, didn't you?

A. Yes, but not very long, I don't think. It seems to me I wouldn't guess it over 45 minutes.

Q. Mr. Ames went out in the street for a while looking for a policeman, didn't he?

A. Yes, he went out and then came back.

Q. And you were waiting all that period of time?

A. Yes, I was waiting upstairs, thinking some of these fellows might come in and maybe I could hold them. I had my badge to show who I was.

The Court: We will take a recess in these proceedings until tomorrow morning at 10 o'clock.

(Testimony of Joseph Hallock.)

The jury will retire until then. Court is adjourned until tomorrow morning at 10 o'clock. [377]

* * *

JOSEPH HALLOCK

Cross-Examination
(Continued)

By Mr. Pomeroy:

Q. Do you recall putting a slip of paper or a notice on this automobile to hold it?

A. No, sir, I did not.

Q. Did you know that had been done? [378]

Q. As I told you, I am quite certain I saw a piece of paper on the windshield. I think I did, I am pretty sure that I did.

Q. Did you order that done?

A. No, sir, I did not.

Q. You don't know anything about it?

A. No, sir, I do not.

Q. You mentioned yesterday that there broadcasts which said "Post time," you heard it at night?

A. No, the one at night was no racing information.

Q. No racing information? A. No.

Q. You are the assistant in charge of this office, are you, for the Federal Communications Commission? A. Yes.

Q. What was your theory of this case, that these men were betting on horse races?

(Testimony of Joseph Hallock.)

A. Well, it seemed quite apparent to us, yes, that they were doing just that.

Q. Do you know where they were betting?

A. Mr. Arlowe saw one or two, as has been testified. We presumed that any of various downtown bookies, we presumed they were.

Q. Are there downtown bookies?

A. I suppose so. [379]

Q. You say Mr. Arlowe saw somebody someplace. Where was that?

A. I think his testimony has been given.

Q. I am asking you the theory of your office on this. Mr. Arlowe saw them where?

A. He saw them down near Franco's Cafe, I believe. When they said "Go to Franco's," I believe he went up to Franco's, thinking that he might see someone with a hearing aid, and did.

Q. Is it a bookie place there?

A. I don't know.

Q. You don't know if there are any bookies in Seattle? A. I don't know.

Q. If there are no bookies, they couldn't bet, isn't that right?

A. I would think so, yes.

Q. But that was the theory of your office, that these men were betting on horse races?

A. Yes. Well, it wasn't a theory, I mean, it was a foregone conclusion, in our minds, anyway. They gave it, as we have told, day after day. They gave each winner, with much excitement, and

(Testimony of Joseph Hallock.)

many times over and over, so the presumption was that the man with the hearing aid would walk in right to the bookie and play his bet.

Q. You didn't know whether or not there were bookies in Seattle? [380]

A. No, sir, I do not.

Q. You didn't know it then?

A. No, sir, I do not.

Q. And your office didn't know?

A. Not with any positive knowledge, any more than you assume that those things go on in any town.

Q. You assume that they go on?

A. Yes, sir.

Q. Was there any investigation on this case or cases similar to this during this period of time in any other city in this locality, in the Western District of Washington?

A. Not investigation, but I think we had one tip—I know we had one report from the Everett police that several men had taken local bookies for, I believe, several thousands by radio.

Q. The Everett police told your office?

A. I believe I am correct in that.

Q. That somebody had taken one bet, you mean, from local bookies? You mean Everett local bookies?

A. For several days they had taken local Everett bookies, over a period of days, for a two or three thousand dollar total, I believe, was mentioned.

(Testimony of Joseph Hallock.)

Q. And that was in Everett, Washington? When did you receive that information?

A. I didn't receive that personally, but it seems to me [381] Mr. Arlowe or someone received it just about—almost a day before we started on this case, just about the day before, I think.

Q. What date would that be?

A. The day we actually started listening for these signals was the 2nd of February, so I think that is the day we got this report.

Q. The 2nd of February?

A. I believe it was, or within a few days before that.

Q. Were there any other sources of information that you had about betting or horse races when you were conducting the investigation of this particular case?

A. Well, this local amateur, I believe, has been mentioned in testimony, I haven't been here all the time, a local amateur who said that he heard them, I believe, February 1 or approximately that time talking about racing information and giving the name of a horse. I think that is in the record.

Q. Is that on a different wave length than what you claim these men were broadcasting?

A. No, I believe, to the best of my recollection, that was also on the 3936 kilocycles, which was the frequency they used the first day we heard them.

Q. That is you allege these men used that 3936?

A. That is the first day, yes.

(Testimony of Joseph Hallock.)

Q. And the broadcasts you heard came over another frequency? [382]

A. Thereafter they used 3536 continually for the whole rest of the case. They put in the other crystal, yes, sir.

Q. Did your office attempt to find these bookies or find out if they were betting here?

A. No, we had no interest in the racing. We were interested only in stopping the unlicensed radio transmitter which might be used for sabotage or some other purpose. We have no interest in what they do as to betting, the bookies, we have no interest in that.

Q. Your interest is in the sabotage?

A. We are interested in any unlicensed radio transmitter.

Q. In the course of your investigation, did you ask for the cooperation of local authorities, as far as bookies were concerned?

A. I think so—I say I think—a lot of water has gone over the dam. I think we probably talked to somebody, perhaps Mr. Wiltse did, and asked if they could tell us off the record where we might hang around some bookie establishments looking for these men, but I don't believe that any definite addresses of positively known bookies were given to us. I say I think, because I didn't do that. I believe the regional manager, Mr. Wiltse, did that.

* * *

(Testimony of Joseph Hallock.)

Q. Do you know whether or not such establishments are [384] legal or illegal in the City of Seattle?

A. I presume they are illegal. I have never heard of their being legal or I suppose they would be wide open with signs on them, doing an immense business.

Q. They are not wide open with signs on them?

A. Not to my knowledge.

Q. You have never seen one?

A. I have not.

Q. You just presume these things?

A. Absolutely.

* * *

SAM STANDARD

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore: [385]

* * *

Q. What is your business or occupation?

A. Assistant manager at the Benjamin Franklin Hotel.

Q. Were you the assistant manager at the Benjamin Franklin Hotel on or about February 10, 1949? A. I was.

Q. On or about that time, did you see any of

(Testimony of Sam Standard.)

these three men, these three defendants, in your hotel? A. I saw them on October 10.

Q. On what date?

A. I am sorry, on February 10.

Q. Where did you see them at that time?

A. In the lobby of the hotel.

Q. Did you at any time talk to them?

A. Once, to my knowledge.

Q. When was that and where?

A. In the lobby. I asked Mr. Casey if he were intending to check out that day, as his suite was on reservation.

Q. What did he say? A. He said no.

Q. Did you observe them any other time during the day?

A. Well, I observed them that afternoon. They were around the lobby quite a bit of the 10th. [386]

Q. Were you looking for them that day?

A. I was watching them, yes.

Q. What did you observe at this time?

A. Well, I don't know exactly what you mean, but the fact, possibly, that they were apparently under a nervous strain.

Mr. Pomeroy: I will object to that as a conclusion, rather, not being responsive to the question.

The Court: The objection is sustained.

Q. When and where did you see them at the time you refer to?

A. Well, in the lobby, Mr. Dore.

Q. What part of the lobby, Mr. Standard?

(Testimony of Sam Standard.)

A. They were on the mezzanine for a while, they were in the coffee shop, in and out of the front door.

Q. What were their mannerisms at that time?

A. Nervous condition.

Q. Did you see any luggage?

A. No, I did not.

Q. About what time of day was that?

A. I am not sure. I think it was from 2 o'clock, maybe from 2 to 5, or 4, whenever they were picked up.

Q. Did you see these men after they were arrested.

A. I saw them go out under arrest.

Q. With Marshal Scully?

A. That is correct. [387]

Q. About what time was that?

A. I should have refreshed my memory. I don't know, it was about 5:30, perhaps 6, when they were taken down, sometime in the late afternoon.

Q. Did you give any information over the telephone to the FCC authorities on that day concerning the defendants?

A. Yes, I called Mr. Hallock and told him that apparently they were going to check out or leave without checking out, from their actions.

Q. Was a bill owing at the hotel at that time by the defendants? A. Yes, it was.

Q. Do you know what amount?

A. Yes, approximately $30 between them.

(Testimony of Sam Standard.)

Q. Did you give any orders to hold their car for that bill?

A. Well, I didn't give any direct orders to hold their car for that bill, but I refreshed the garage's memory that they were supposed to hold the car until they had the claim check on the car, which is the equivalent.

Q. You had the claim check? A. We did.

Q. And you held that during that day, did you?

A. I didn't hold it. It was there and if they had asked for their claim check, I probably would have asked for their bill. [388]

Q. What is the general procedure as to claim checks concerning the cars in the garage and the bills that are owed by the tenants of the hotel?

A. Well, I never have had to actually hold a car on a bill. I don't know whether I could do it legally, Mr. Dore. I have never checked on that, but I know that the cars are picked up by the garage, often, and the claim check then is left in the key box of the guest, and they will pick it up when they want to pick up their car.

Q. Was the claim check of the defendants in their key box on that day?

A. It was in their key box, 1217 suite.

Q. When a bill is owing and there is a claim check in a box and a person is checking out in your hotel, is the fact that he is checking out reported to you if a bill is owing?

A. Do you mean——

(Testimony of Sam Standard.)

The Court: Read the question.

(Last question read by reporter.)

A. Well, certainly it is reported. If anyone attempts to check out at any time and they owe a bill, it is always reported to me immediately.

Mr. Dore: That is all.

Cross-Examination

By Mr. Pomeroy: [389]

* * *

Q. What hours were you working February 10, 1945?

A. Nine in the morning until about six in the afternoon.

Q. What hours are you working now?

A. About seven in the morning until three in the afternoon.

Q. And you think it was about 5:30 in the afternoon when these men were arrested?

A. I don't remember that far back. I am sure it was before I went home at six. I was interested enough, if it had been a little after six, I probably would have stayed, in fact, I would have had to stay until the case was settled.

Q. Would you say I would be in error if I told you they were arrested about 3:20 in the afternoon?

A. No, it would just surprise me. I didn't think it was that early.

Q. Do you think it might have been about 3:20?

(Testimony of Sam Standard.)

A. I know it was in the afternoon, I know it was before I went home.

Q. Prior to the arrest, had you observed these men around the hotel? A. I had.

Q. Where?

A. In the lobby, in the coffee shop, on the mezzanine floor. [392]

* * *

Q. Did you ever talk to these men?

A. Never except the one time I mentioned, Mr. Casey.

Q. When was the last time that they had paid on their bill prior to the time you called the Federal Communications Commission office? [393]

A. Paid the bill on the 9th.

Q. The day before? A. That is correct.

Q. Were they paid up in the room rent through that day then? A. That is correct.

Q. What made you think they were checking out?

A. Well, if I told you, it would be objectionable; I mean, it wouldn't be acceptable. It is merely because I am in the hotel business and we know when people act like they are going to leave, or we get a feeling about them. I had a very distinct feeling about them, and besides, I knew they were wanted by the law and I wanted my money before the law picked them up. All I was interested in was my bill.

(Testimony of Sam Standard.)

Q. You collected money from them to give them a room in the first place, didn't you, personally?

A. I may have, I didn't know them at that time. Did I personally register them in, do you mean?

* * *

Q. They were nervous before they were arrested? A. Yes, sir.

Q. How did they show this nervousness, or was it just a feeling that you had?

A. I will give you a good description.

Q. All right.

A. Mr. Casey and I believe Mr. LaClair, I am not sure, walked along the front of the desk and apparently they thought—well, I don't know what they thought, maybe someone was in the back checkroom—and as they walked by the desk with very straight faces they would look out of the corner of their eyes and see what they could see in there. Apparently they thought there might be a policeman in there. There wasn't at the time, but I knew they were being watched.

Q. You knew they were being watched so you watched them, too?

A. No, I was interested, watching them.

Q. To your mind, when they glanced to one side and looked, that was a nervous gesture?

A. It certainly wasn't the way the other guests act.

Q. All other guests walk in and look straight ahead?

(Testimony of Sam Standard.)

A. Have you ever observed anyone looking as hard as they can out of the corners of their eyes without turning their head? When two men do that and you look at them, it is quite an obvious attempt to——[395]

* * *

Q. As a matter of fact, you knew that these men were being checked on by the Federal Communications Commission? A. That is correct.

Q. And you kept watching them? Did they try to hide any place? A. No, sir.

Q. They sat up there on the balcony and talked to some people, five of them?

A. At one time.

Q. They were in plain view from the desk?

A. Correct.

Q. They were in the coffee shop, weren't they?

A. Correct.

Q. And they walked right in and out of the lobby past your desk? A. Yes.

Q. Was there anything to indicate to you that they were hiding or attempting to run away? [396]

A. No, I am afraid that there wasn't, except my own feelings.

Q. That was because you knew that the FCC men were looking for them, and you became part of that system when you called the FCC office and gave them information, isn't that right? You became a detective yourself?

A. Well, you could say that, of course. I called

(Testimony of Sam Standard.)

them because I thought they were possibly going to leave,

Q. You were quite conscious of the presence of these men in your hotel at the time you observed their arrest, is that true? A. Yes. [397]

* * *

GERTRUDE SULLIVAN

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore:

* * *

Q. What is your business or occupation?

A. Secretary to the manager of the hotel.

Q. What are your duties as secretary?

A. Well, they are many. I keep records. [400]

* * *

Q. I will ask you if you have ever seen these three defendants before?

A. I remember the first man to the right in the first row.

Q. The man next to Mr. Pomeroy?

A. That's right.

Q. Do you remember his name?

A. No, I do not.

Mr. Dore: Let the record show that the witness refers to Mr. Casey, seated next to Mr. Pomeroy. Is that agreeable, Mr. Pomeroy?

(Testimony of Gertrude Sullivan.)

Mr. Pomeroy: The record may so show.

Q. When and where did you see him?

A. I was relieving the clerk. I often do that on Sunday morning, and Mr. Casey, is it, came in and registered, asked for Room 1217. When I came on duty in the morning there was a note from the night clerk asking me to move the gentlemen who were in Room 616 and 617 to 1217, but they had checked out, so I cancelled the order. They came back, re-registered and asked me for 1217. It wasn't available.

Q. Did Mr. Casey say anything else to you, or did you have any further conversation with Mr. Casey?

A. Nothing other than when 1217 was available that he should have the room.

Q. What else occurred? You say that was on Sunday? A. That was on Sunday. [401]

* * *

Q. Did you register these men? A. I did.

* * *

Q. As a matter of identification, what dates do those records show?

A. They are registered for the first time January 30, I believe about 1 or 1:30 in the morning.

Q. Just the dates, please.

A. January 30.

Q. Any others? A. No.

Q. Are those the only records you have?

(Testimony of Gertrude Sullivan.)

A. That would be the only registration, yes.

* * *

RAYMOND TURNER

called as a witness by and on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dore: [406]

* * *

Q. I will ask you if you were employed at the Motor Ramp Garage on or about February 10, 1949? A. I was.

Q. Were you employed at that garage on that day, February 10? A. I was.

* * *

Q. Was there a Packard automobile in the garage at that [407] time with a Rhode Island license?

A. There was.

Q. Do you know how many days the Packard had been there? Had you seen it on other occasions?

A. I had seen it approximately a week or ten days before that.

Q. During what hours do you work?

A. At that time I was working from 9:30 to six, if I remember rightly.

(Testimony of Raymond Turner.)

Q. Did you see the Packard automobile on February 10? A. I did.

Q. When and where?

A. It was in the basement, in Row 2-X, about half way down.

Q. What was the occasion of seeing it?

A. When I come on duty in the morning, I take a mental check of the cars in the basement for overnight, how many lay over, and also I check for vacant stalls, and I remember of it being there in the morning when I went on duty.

Q. Did you have anything to do with that car that day? A. Yes, I did. [408]

* * *

Q. I will direct your attention to Plaintiff's Exhibits for identification 5 and 6 and ask if you have ever seen those items before?

A. Yes, I have.

Q. When and where did you see those, please?

A. I saw them approximately 2:30 or 2:45 in the afternoon of the 10th.

Q. Where?

A. In the back of the Packard convertible, the one with Rhode Island plates.

Q. Did you at that time see the contents of either bag? [410]

A. I saw the contents of the small beach bag.

Q. Did you see the contents of the large bag?

A. Not at that time, sir.

(Testimony of Raymond Turner.)

Q. Did you later see the contents?

A. Yes, I did.

Q. When and where was that?

A. The contents were still in the Packard convertible, and it was at this time that it was under detention, and I had been requested to open the car.

Q. Who had requested you to hold the car?

The Court: He used the word "open."

Q. Who requested you to open the car?

A. Federal Communications Commission authorities.

Q. Did you open the car? A. I did.

Q. What was in it at that time?

A. This beach bag and this overnight case.

Q. Was that the beach bag that is before you identified as Plaintiff's Exhibit 5 for identification?

A. That looks to be the beach bag that was in the car.

Q. Is that the same beach bag that was in the car the first time you saw it?

A. I wouldn't say definitely it is the same one, but it is the very same type of bag, color and everything, that was in the car. [411]

Q. Did you see the big bag the first time you opened the car? A. I did.

Q. Did you see the contents of either bag?

A. When the car was first opened, I saw the contents of the small bag.

Q. The second time, did you see the contents of either bag?

(Testimony of Raymond Turner.)

A. I saw the contents of both bags.

Q. As to the little bag, to your recollection, did it appear that the same items were in it as you saw the first time? A. Yes.

Q. As to the large bag, what did you see at that time, the second time the car was opened?

A. Well, I observed a small radio sending set, a very small, compact, powerful type.

Q. I wish you would direct your attention to the contents of the large bag, Plaintiff's Exhibit 6 for identification. Would you look at that, please? Did you see that in the bag at the time?

A. Yes, sir.

Q. As to the approximate times, to the best of your ability, what was the first time during February 10 that you opened up the trunk of the car?

A. It was between 2:15 and 2:30 in the afternoon.

Q. What time was the second time? [412]

A. It was approximately around 3:45.

Q. Do you recall at what time——

A. I beg your pardon, I made an error there. It was 2:45.

Q. Do you recall at what time the man came over to get the car?

A. The person who took the car out?

Q. Yes.

A. That was around 3:45 or 4 o'clock.

Mr. Dore: No further questions.

(Testimony of Raymond Turner.)

Cross-Examination

By Mr. Royce: [413]

* * *

Q. Directing your attention to February 10, did you at that time recieve a telephone call from someone purporting to be from the Federal Communications Commission? A. I did.

Q. About what time did you receive that telephone call?

A. Around 2 o'clock, if I remember.

Q. Approximately 2 o'clock?

A. Approximately.

Q. In what way did this person identify himself as being with the FCC?

A. I couldn't say definitely, but to the best of my knowledge he identified himself by name and as such and such an organization, and told me the purpose of his call.

Q. Did he identify himself as Mr. Hallock?

A. I believe that was the name that was used.

Q. What did he tell you the purpose of his call was?

A. He asked if we had a certain automobile in storage. I told him we did, and he told me that these men were wanted by Federal authorities and that they were on the way down to apprehend the men at the garage.

Q. Did he ask you to do anything in relation to the car?

(Testimony of Raymond Turner.)

A. I believe in the course of conversation it was agreed to disable the car.

Q. Pursuant to that agreement, what did you do?

A. He was giving me a brief rundown on the purpose of his [415] call before that.

Q. I mean, you said you agreed you would disable the car, did you not?

A. Well, he had asked us to hold the car or disable it in some way.

The Court: Then he wants to know what you did, if anything, in order to disable it.

A. After the call was completed, I went to the basement and went and removed the rotor block and coil wire.

The Court: A rotor block, is that what you said? Can you describe it?

The Witness: I can attempt to describe it.

The Court: Describe where it is, what function it performs.

The Witness: It is a small oblong bakelite block, with a metal contact that is placed in the distributor of a car. It is the central nervous system of a car, and it is essential to have this bakelite strip with the metal contactors on it to transfer the electricity from your battery source to the ignition. With this removed, the car cannot be run in any shape or manner.

Q. Did you say you also did something with the wire?

A. I removed a short coil wire.

(Testimony of Raymond Turner.)

Q. The wire from the coil to the distributor?

A. The wire from the coil to the distributor is in two [416] sections, with a radio condenser in between, and I removed the short section from the condenser to the distributor.

Q. In the condition that that car was in after you had done this, would it have been possible to operate the car with the engine?

A. No, it would not.

Q. What did you do with the piece of wire that you removed and the rotor after you removed it?

A. I took them up into the office and placed them in the desk drawer, and the attendant at that time—I don't remember who was on duty, but I passed the general information that those parts were in the drawer if they were required.

Q. Sometime later, did some gentlemen appear who identified themselves as FCC people?

A. Yes, they did.

Q. About how much later was that, approximately?

A. I would say approximately 25 or 30 minutes after the phone call.

Q. Do you recall either of these gentlemen's names?

A. I believe Mr. Hallock was one, and as to the other, I couldn't be poistive.

Q. Is Mr. Hallock in the courtroom?

A. Yes, he is seated by the window over there.

Q. This was approximately how much later

(Testimony of Raymond Turner.)

after you took the rotor and piece of distributor wire out of the car? [417]

A. 20 or 25 minutes, that is approximately.

Q. What did they tell you at that time?

A. They came into the garage and identified themselves and asked to be shown the car, where it was situated, and I took them down into the basement, showed them the Packard, and I let them lead on from there.

Q. Did you then take them downstairs to the lower ramp? A. I did.

Q. Did they both go with you?

A. Yes, they did.

Q. What did you do there?

A. They looked at the car, if I remember correctly, they glanced inside of it and behind the seat in the front seat.

The Court: I think he was asking you for what you did, and not what they did.

A. And then I was requested to open the trunk door of the car.

Q. Did you procure the keys and open the door for them? A. I did.

Q. At their request? A. At their request.

Q. What did they do after you opened the trunk door? A. You asked what they did?

Q. Yes. You opened the trunk and what did Mr. Ames and Mr. Hallock do? [418]

A. If I remember correctly, the exhibit here, the beach bag, was laying to one side in the trunk. It

(Testimony of Raymond Turner.)

was unzipped at the time. You could see what the obvious contents were.

Q. They opened the zipper bag?

A. No, they did not. It was already open. The contents were visible. And then the larger case was opened and the contents were observed.

Q. Were there any other bags in the car?

A. No, there wasn't.

Q. Just the two bags? A. Yes.

Q. You don't know of your own knowledge how those bags got in that car?

A. Not definitely, no.

Q. You don't know? A. Not definitely.

Q. Then what did Mr. Ames and Mr. Hallock do?

A. The luggage was returned to its place, I locked the trunk, kept the keys myself and we returned upstairs.

Q. All three of you returned upstairs?

A. That's right, sir.

Q. Then what did they do when you returned upstairs?

A. If I remember correctly, one person went to get a passing prowl car and the other returned to the Benjamin Franklin Hotel. [419]

Q. You say one man went to get a prowl car?

A. Yes.

Q. You mean a city police patrol car?

A. That's right.

Q. Did the city police patrol car show up there?

(Testimony of Raymond Turner.)

A. Yes, it did, within about 10 minutes, I believe.

Q. How many policemen were there in it?

A. Two.

Q. Were they in uniform or plain clothes?

A. They were in uniform.

Q. What did they do?

A. There was a brief discussion, I believe, with Mr. Hallock, and they went in the basement. I went about my duties, I didn't pay any attention to what the conversation was.

Q. When you say the policemen went to the basement or the lower level, do you mean they took their patrol car with them? A. Yes, they did.

Q. Did they give you any instructions?

A. Not at that time. It was after the patrol car went into the basement.

Q. I mean after the police car went into the basement, did the policemen give you any instructions? A. The policemen, no.

Q. Who did? [420]

A. Mr. Hallock.

Q. What instructions did he give you?

A. If I remember correctly, I was told if anybody come to claim the Packard automobile I was to take them into the basement and have them identify the car.

Q. Were you told to inform the police, give them a nod or anything like that, so the policemen would know who the man was?

A. I was told, when this party come for the car,

(Testimony of Raymond Turner.)

I was supposed to arrange a signal of some sort for them so they would know he was after that particular car.

Q. Did someone come for the car?

A. Yes, he did, sir.

Q. What did you do about that? Was it a man or woman?

A. I asked him to go into the basement with me to identify the car and to be sure that it was his own. So, if I remember correctly, the man said he was glad to, and went with me. We went into the basement and I took him to the side of this Packard automobile and I nodded my head, and these two policemen and the FCC man took over.

Q. What do you mean, took over?

A. They left the patrol car, and the gentlemen that I had with me, Mr. Donofrio, I believe it was, they started to frisk him and ask him questions.

* * *

Q. Would you explain to the Court and jury what you mean by frisk?

A. Well, in police procedure, they had him raise his hands and patted him on the pockets and legs to see if he was carrying any weapons, I believe it was.

Q. Did they remove anything from his pockets?

A. I believe that there was a racing sheet halfway out of his pocket that was removed, a standard racing form.

* * *

The Court: Plaintiff's Exhibit 4 is withdrawn and returned to Mr. Dore who produced it. The

next two exhibits are treated together in the evidence, or approximately so, and may be said to be related, Plaintiff's Exhibits 5 and 6.

Mr. Dore: Those should be admitted, Your Honor, under the testimony Your Honor has heard here. I think the only question is a matter of search and seizure, which has previously been argued.

Mr. Royce: If Your Honor please, it is true as Mr. Dore has stated that this matter has been argued before Your Honor on affidavits. At the present time there is, as we promised at the beginning of the trial when the exhibits were offered by the Government, further testimony as to the particular search and seizure of these articles. I would like to draw Your Honor's attention to the testimony particularly of three men, Mr. Hallock, one of the FCC men, Mr. Turner, the garage attendant, and Mr. Standard, the hotel assistant manager.

Mr. Hallock testified that while the other members of the party were attempting to secure a warrant for the arrest of these gentlemen, that he made a phone call to the Motor Ramp Garage and asked the attendant there to hold or disable the car. This is prior to the time that any warrant had ever been issued for these gentlemen. [435]

The garage attendant testified that in response to this phone call, he went down and took the rotor out of the distributor of the car. He also took a short portion of wire running from the coil to the distributor, and that as a result of that, the car was effectively disabled.

In addition to that, without the aid of a warrant,

Mr. Hallock procured two Seattle policemen who drove their prowl car down there and parked their car near this particular Packard automobile. Then when Mr. Donofrio came to the scene, these policemen and Mr. Hallock came out. Mr. Hallock says he didn't search him, but he does admit he took a newspaper out of his pocket. A disinterested witness said the man had his hands over his head, and the policemen patted him. Maybe Mr. Hallock doesn't recall that.

It is our position, if the Court please, that the seizure of this car took place at the time that the garage attendant, the agent of the Government, took the rotor out of this car. The car couldn't have been moved, and they further took possession of this car by putting the police officers down there. I think the Government's intention in the use of these police officers, and Mr. Hallock's intention, is clearly shown by the fact that when someone showed up in the vicinity of this car, they said they didn't arrest him. Well, I submit to Your Honor [436] that they did arrest him. You don't have to put a man in jail to put him under arrest. You merely have to hold him against his will. I submit to Your Honor, if you yourself were walking down the street and a police officer makes you put your hands up, pats you, takes a newspaper out of your pocket, that you are under arrest.

Thus we say that the seizure of this car was made before the warrant was issued. What grounds did the Government have to make this search and seiz-

ure? Mr. Hallock testifies that he got a phone call from Mr. Standard. Mr. Standard admits making the phone call, but he admitted on cross-examination that he had no reason to believe that these men were checking out or were going to make their escape. First he said they acted suspicious, to his inner sense of the hotel man, they looked out of the corners of their eyes, but he finally testified he had no grounds to believe these men were going to check out.

Consequently, I submit to Your Honor that the seizure of this car took place before the warrant was issued. It took place without reasonable grounds for the seizure of the car, and is therefore illegal, and the evidence, Plaintiff's Exhibits 5 and 6, should be suppressed, and any evidence in connection therewith.

Mr. Pomeroy: May I add one point to that, Your Honor?

The Court: You may do so. [437]

Mr. Pomeroy: That is that the officer Hallock was at this garage from approximately 2:40 in the afternoon, when he knew Mr. Arlowe was up before the United States Commissioner, that this man, the assistant in charge of this office, could have by a telephone call procured a search warrant, that that car was under his control from then until it was opened by Mr. Arlowe at 3:20, practically an hour, when he made no attempt whatever to obtain a search warrant, at least 40 minutes before the warrant of arrest was issued.

The Court: Adverting to counsel's comment on the effect of Mr. Standard's testimony, I will say that the Court heard and considered all of Mr. Standard's testimony, that on direct as well as that on cross-examination, and all of it together. The Court also considered the testimony of other witnesses as to what Mr. Standard had said regarding the actions of the defendants, concerning the question of their checking out.

The Court got the impression from the manner of Mr. Standard's testifying near the end of the cross-examination that he was receiving the effect that might be expected to be received from a grilling cross-examination. I do not think he should have received that effect, because I think the cross-examination was fair, but Mr. Standard acted as if he was one that might have considered himself being grilled on cross-examination. I repeat, I do not think he should have felt that way, but I think he did, and he acted like one who was willing to say almost anything in order to bring an end to the cross-examination. That is the way he impressed the Court at that stage of his examination.

I think the taking of the two exhibits by the Federal Communications Commission officers is authorized under the rule of the Carroll case, and if that rule is to be changed, by judicial rule, it must be changed by higher judicial authority than this Court. I do not believe it should be changed. I do not believe it is possible or reasonable or feasible or required by due process of law under the Con-

stitution of the United States or any amendment thereof that automobiles be treated like homes so far as the requirement of search warrants is concerned, and that if some higher judicial authority higher than this Court does establish that as a universal rule, then a large percentage of the proper activities of law enforcement officers might just as well be discontinued.

As I say, I feel bound by the rule of the Carroll case, and feel that it is properly applicable to the circumstances here regarding the taking by the Federal Communications Commission officers of Exhibits 5 and 6 from the Packard automobile in the garage under the circumstances [439] prevailing at the time. I think it was a lawful taking under the circumstances. The objections to those exhibits and each and all the objections, are overruled. Plaintiff's Exhibit 5 and 6 are admitted. [440]

* * *

DEFENDANTS CASE

Mr. Royce: If the Court please, at this time we would like to renew the defendants' motion to strike the testimony, which motion was made earlier in the trial, and objection taken to the introduction of any testimony or other evidence which would divulge the existence, contents, substance, purport, effect or meaning of any broadcast claimed to be made by these defendants, the motion being based on Title 47, USCA, Section 605, and the case cited to Your Honor, for the reason that under such

statute and citation these communications are privileged, and it is provided that they shall not be divulged, either the contents or the mere existence of such communication, to [443] any person without the consent of the sender, and that the term any person includes a court of law, and that the introduction of such testimony is error and prejudicial to the defendants.

The Court: The motion is denied as to each defendant.

Mr. Royce: At this time, if Your Honor please, I would like to renew our motion for the suppression of the evidence seized from the back of the Packard automobile in the Motor Ramp Garage, being Plaintiff's Exhibits 5 and 6, on the ground that they were unlawfully seized contrary to the laws of the United States, and unlawful search and seizure, and we also move to strike any testimony with reference to these exhibits, including the testimony as to subsequent testing of these exhibits, and all testimony coming from said unlawful search and seizure.

The Court: The motion is denied as to each defendant.

Mr. Royce: If the Court please, at this time we move to dismiss the indictment and each of the counts thereunder as to all three defendants on the grounds as more particularly set out as to all seven counts. The first six counts allege particular transmissions, and the seventh count alleges a conspiracy. The tenor of all of the counts, each of the counts

alleging a particular broadcast and the count alleging the conspiracy, are based on the Government's contention that such broadcasts were done without (a), a license for the station, or (b), a license for the operator.

If the Court will recall the testimony, there is no testimony in this case as to the manner of the issuance of a license to operate a station or the license for an operator, with the exception of these gentlemen who did say they gave tests to operators as part of their duties. The only evidence as to a lack of license on the part of this station or of any of these three gentlemen is the testimony of Mr. Arlowe that he was in the radio section for this district of the FCC and that he had checked his files and that those files embraced his district, and in those files he had copies of licenses issued, and that he had checked those files and found no license issued to these defendants.

There is no testimony eliminating the possibility that these men may have had a license issued back East in some other district, or issued directly from the Federal Communications Commission itself. There is no such evidence. There is no evidence in this case indicating that a license so issued to either a station or an operator would not be valid here in the State of Washington in the territory embraced by Mr. Arlowe's section. Further, the statutes under which these defendants are charged do not set up any procedure whereby such testimony as that [445] introduced by Mr. Arlowe would obviate the fact of their having a license.

It further appears under one of the statutes referred to in the conspiracy count that the Communications Commission, with certain exceptions, may waive the requirement of an operator's license. There is no showing that that was not done. The section I refer to is Section 318 of Title 47. That has not been obviated. I submit to Your Honor that on the particular point, the essential part of the Government's case, that that was an unlicensed station operated by unlicensed operators, that the Government has not proved a lack of license.

I would like to call Your Honor's attention to Count I, which alleges that on the 7th of February at Seattle these three defendants did operate a station without a license. The testimony adduced by the plaintiff in support of this indictment, by their own witnesses, they testified that this station, this transmitter, the voice over the transmitter was calling Eddie, Ralph, Casey. This is the testimony of Mr. Ames on the 7th. The purpose for which the Government introduces that evidence, they hope to connect that broadcast with Eddie Plesa and Ralph Casey.

I submit to Your Honor that as far as Ralph Casey and Edward Plesa are concerned, under Count I of the indictment, that that count should be dismissed under the Government's [446] own testimony. They couldn't be broadcasting when somebody was calling to them. The Government's contention is that this radio receiver in the little reddish-brown bag was being handled by either

Eddie Plesa or Casey down on the street and that somebody was broadcasting. I submit to Your Honor that the men couldn't be in two places at one time, and if the Government's evidence is that this transmitter was transmitting to these people, these two men right here, then they couldn't be there transmitting.

The same thing is true of Count II. Your Honor will recall that Mr. Arlowe testified that the transmitter station was calling Ralph, Eddie, Casey, Plesa; and for that reason again the charge says, "and each of them did." The Government brings this evidence in to show that these men were connected with it. I think they have eliminated Casey and Plesa on that count also.

The same thing is true of Count IV, which is again the February 7th broadcast. The difference between Count IV and Count I is that Count I refers to operating without a station license and Count IV refers to operating without an operator's license, and the same thing is true of that count. The Government has proved itself right out of any case under that count against Casey and Plesa.

The same thing is true of Count V. Count V is again the same date as Count II, and is the difference between [447] the one charge of operating without a station license and the other charge of operating without an operator's license. [448]

* * *

The Court: Gentlemen, I am unable to accept the views of the Government respecting these

finding of proof established by the evidence beyond a reasonable doubt, and that is as to alleged overt acts 1, 2, 3, 4, 5, 11, 12, 13, 14 and each and all of them will now be stricken from the indictment and from Count VII thereof. There are stricken from the indictment and from Count VII thereof the following overt acts: 1, 2, 3, 4, 5, 11, 12, 13 and 14. The motion to strike the remaining overt acts alleged in Count VII, [460] namely, 6, 7, 8, 9, 10, 15, 16, 17 and 18 is denied as to each and all of said alleged overt acts. Is there any doubt in the minds of counsel as to the Court's ruling on this motion to strike the overt acts?

The motion to dismiss each and all of the counts is denied as to each and all of the counts. Is there any other motion now pending before this Court as to which the Court has not announced a ruling?

* * *

GEORGE LaCLAIR

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Pomeroy: [461]

* * *

Q. How many generations of your people lived there? A. Five.

Q. How many brothers and sisters do you have there now? A. One brother, one sister.

(Testimony of George LaClair.)

Q. Does your brother have some position of prominence there? A. Yes, sir.

Q. What is that position?

A. He is president of the school board.

Q. What business is he in?

A. He has a public market, meats and groceries, vegetables.

Q. While you were in Pawtucket, Rhode Island, did you meet Eddie Plesa? A. Yes, sir.

Q. Tell where, when and how you met him.

A. Well, right close to where I lived, within a distance of a block or two, there is a little business settlement called Penaults Corner. Nights after the races—the racetrack is only a quarter of a mile from where I live—all the boys employed at the racetrack and the local residents stand around and talk, moving pictures, bowling alleys, and so forth, around there, and we became acquainted. So, rooms were at a premium at this time, and I had an extra room in my home, and he asked me if he could rent the room, and he stayed with us all during the summer, during racing season. [464]

Q. How long did he live with you?

A. I believe it was from around February, April, up to the latter part of November of that year.

Q. That was when?

A. I believe it was 1943.

(Testimony of George LaClair.)

Q. Did you see Eddie Plesa much after November, 1943?

A. I seen him the next year when he came back there. He went away that winter to ride, I believe, to Florida. The next year I seen him when he came back to ride.

Q. Did he live with you when he came back the next year? A. Yes, sir.

Q. How long did he stay that year?

A. I believe he was just there for the Narragansett meet, I think that was 45 days.

Q. How old were you at that time?

A. About 26 or 27.

Q. Do you know how old Eddie Plesa was at that time? A. Very young.

Q. About 16, wasn't he?

A. He claimed he was 18, but I think about 16.

Q. Did you see him again after 1944 until recently here in the State of Washington?

A. I believe I seen him in 1945.

Q. Where was that?

A. In Salem, New Hampshire. [465]

Q. What was the occasion of that meeting?

A. He was there at the races, and I happened to go up there one day, and ran into him.

Q. Then you didn't see him until you came out to the State of Washington?

A. Until I came to Lacey, Washington.

Q. Did you have occasion to have correspondence with him during the period of time when you didn't see him?

(Testimony of George LaClair.)

A. We corresponded not too regular, maybe three or four letters a year.

Q. Where did you send your letters to him? Where was he?

A. He worked for Mr.—one time I was writing to him, he was working for Louis Mayer, the motion picture magnate, at Perris, California. Another time, I believe it was Fairgrounds, New Orleans, he was at the racetrack there.

Q. And he has always been connected with races, so far as you know? A. Yes, sir.

Q. Did you become ill while you lived in Pawtucket? A. Yes, sir.

Q. What was your trouble? Briefly tell the Court and jury.

A. I had a very severe attack of gastric ulcers.

Q. Did this occasion any special treatment?

A. Yes, sir. I was put in Massachusetts General Hospital.

Q. How long were you required to take treatment for this [466] trouble you had?

A. A year and a half.

Q. Did you remain in Pawtucket or did you go back to your home?

A. Well, I came back home after, I believe, six months. I moved back to Fort Edward, New York.

Q. Have you continually had trouble resulting from this original illness you had?

A. I haven't been bothered in the last year or so with my stomach. It has been pretty good for the last couple of years.

(Testimony of George LaClair.)

Q. Did you have an accident in 1947?

A. Yes, sir.

Q. Tell us something about that. What injuries did you receive as a result of this automobile accident, or was it an automobile accident?

A. It was an automobile accident.

Q. Tell us something generally of the injuries you received as a result of that accident?

A. I ruptured both lungs and punctured the right one, and I pulled the ligaments away from five vertebrae in my back. I was paralyzed for eight weeks.

Q. Did that incapacitate you from doing any strenuous work of any kind?

A. I was laid up pretty near a year. [467]

Q. When were you finally able to go back to work?

A. That was in 1947, and I guess I was laid up about seven or eight months. I went to Lake George in New York, I went to work for a Mr. Bolton. I worked two days and ruptured my appendix. I was put right back in the hospital for another six weeks.

Q. When were you able to go back to work?

A. I didn't do anything then up until I started for here right after Christmas.

Q. Did you do any work for your brother in the store?

A. I did help him out occasionally over the weekend or something like that if he was busy.

Q. That was during the year of 1948?

(Testimony of George LaClair.)

A. Yes, sir.

Q. Do you know Ralph Casey, one of the other defendants in this case? A. Yes, sir.

Q. How long have you known him?

A. Since we went to school, 14 or 15 years old, through high school.

Q. Where was that high school?

A. He went to South Glens Falls and I went to Fort Edward.

Q. How well did you become acquainted with Ralph Casey? A. Real well.

Q. Did you do things together, visit with each other? Tell [468] us something about that.

A. We caddied together at the Glens Falls Country Club, and we competed in sports together, and then we got out of school, we fooled around together.

Q. During the time you were in Pawtucket, did you see him then? A. No, I never did.

Q. Where was he during the time you were over there in that war work? A. In the Army.

Q. When did you again become acquainted with him, or get to see him, after your work in Pawtucket?

A. Maybe one or two days after he was discharged from the service.

Q. Where was he living?

A. South Glens Falls.

Q. How far is that from Fort Edward, New York?

(Testimony of George LaClair.)

A. About five miles.

Q. Directing your attention to this correspondence with Mr. Plesa, where was he in November, 1948? A. Lacey, Washington.

Q. Had you ever been out to the State of Washington before? A. No, sir.

Q. Tell the Court and jury something of this correspondence in November and December, 1948, between you and Mr. Plesa. [469]

A. Well, I hadn't heard from Eddie for, I guess, three or four months, and I got a holiday card, and in the holiday card was a message, a small letter like he usually writes, and he told me it was very lovely country, mild winters, and so on, and told me about this golf club. He said there was a golf club out here, maybe I could rent or buy it, and should be a good thing. It was located very close to a racetrack where he had been riding out here, he knew a lot of people who frequented the place and would go there if sombody he knew had it, and said if I felt like it and could do it, it would probably be a good advantage to me after the holidays to come out and see him.

Q. Had you received any directions from your doctor about your own health or condition in the future? A. Yes, sir.

Q. What were those instructions?

A. He told me not to do any manual work for two years.

Q. Did he say anything to you about open air and so on?

(Testimony of George LaClair.)

A. Said it would be very good for me. They wanted me to go to Saranac Lake in New York, but I couldn't go there. It was quite expensive there.

Q. In pursuance of this correspondence with Plesa, did you have occasion to discuss the matter with Ralph Casey? A. Yes, sir.

Q. Where did those discussions take place?

A. We talked about it right after I got the message from Eddie, and we kept talking about it for a few days. At the holidays, I believe it was Christmas night or the night after, I was at Mr. Casey's home. We talked about it and decided we would leave right after New Year's.

Q. Did you have a car at that time?

A. Yes, sir.

Q. Will you tell the Court and jury what the situation was about the payments on your car at the time you left?

A. Well, I was a little in arrears.

Q. How much money did you and Casey have when you left New York to come out here?

A. I imagine we had six or seven hundred dollars between us.

Q. Why did you talk to Casey about the golf club?

A. Well, because that is his business. He always kind of stood out in golf, and always liked it.

Q. Did he work at it? A. Yes, sir.

Q. What kind of work did he do in golf?

(Testimony of George LaClair.)

A. His brother was pro at the Lake Lucerne Country Club at Corinth, New York. He used to go over and assist him regularly, give lessons, and so on.

Q. Prior to your coming to Lacey, Washington, had you ever had any experience or anything to do with radio work or equipment of any kind?

A. No, sir, nothing.

Q. When was it you and Casey left New York State to come out here to the State of Washington?

A. Well, it was a week or ten days after the first of the year. I can't remember exactly. I would say about the 10th or 15th of January, around the 15th, I would say, within five days.

Q. Where did you go when you first arrived in the State of Washington?

A. We came in through Seattle, but we never stopped. We went right through to Olympia and I got the directions to Lacey. That is about five miles out, and we went out to the ranch where Eddie was working.

Q. Who was with you when you came to the State of Washington? A. Casey.

Q. Was there anyone else? A. No.

Q. And you drove clear out here?

A. Yes, sir.

Q. Did you stop over at all, or come directly?

A. We stopped a couple of times on the way out. It was very cold, it was during the cold wave, and we stopped in Mandan, North Dakota, for a couple

(Testimony of George L. Clair.)

of days. Our car froze up on us and we stopped in Miles City, Montana. I believe we stopped there overnight and all the next day until the weather broke. We didn't have western clothes that you need through that country, and we didn't have the car winterized. It was 40° below.

Q. Those were the only stopovers?

A. The first night we stopped in Niagara Falls. We drove across the State of New York to Niagara Falls, and the second night we stopped somewhere between there and Cleveland, a tourist camp. The next night we stopped in Chicago, the next night in Minnesota. Then we drove from Minnesota to Mandan, North Dakota, and stayed there for two or three days. The next stop was Miles City, Montana, and we drove all the way from Montana without stopping, left one noon, drove all that night, all the next day until we got to Lacey, Washington.

Q. Did you register at a hotel when you arrived in Olympia?

A. We went to the farm first to see Eddie.

Q. Then what happened?

A. We came back to Olympia and registered at the Governor Hotel.

Q. How long did you stay there?

A. I think we had to get out of there the next day. I think it was Sunday night when we got here. I think we left the next day, because they said the rooms were taken, the legislature was in.

(Testimony of George LaClair.)

We might have stayed two days, but I think it was only one. It was a question of two there and one at the Olympian, or one there and two at the Olympian, [473] but they wouldn't let us stay over one or two days.

Q. With reference to Plaintiff's Exhibits 5 and 6, the radio transmitter and equipment, when did you first see the items contained in those two exhibits?

A. Well, the items contained in the exhibit I seen the early part of that week. We got there Sunday night, I would say it was either Monday or Tuesday. I didn't see the case, the suitcase I didn't see. I seen the contents of it, but not the suitcase.

Q. Where was it that you saw it?

A. In Olympia, Washington.

Q. Who was present?

A. There was Casey, Plesa, there was two other gentlemen present and myself.

Q. Name who the other gentlemen were.

A. One fellow's name was Johnny Wilcie, and the other gentleman, I don't know his name. I know him by sight but I don't know his name.

Q. Where was it?

A. In a restaurant in Olympia.

Q. Where was this equipment?

A. Johnny Wilcie had it.

Q. Did you have a conversation, all of you together, about this equipment? A. Yes, sir.

(Testimony of George LaClair.)

Q. Tell what that was.

A. Well, we had been in Olympia a couple of days and we met this party who Eddie knew. I never knew him before, but Eddie knew him, and we were talking about the golf club, and so on, and he said, "I have something you might be able to use to advantage." So naturally we asked what it was, and he told me about this machine that he had that had been used on a shooting range.

Q. Had you ever been around a shooting range?

A. No, sir.

Q. What was said about this machine, the shooting range?

A. He said he had a shooting range where you take rifles, shoot at 100 yards—I don't know what distance they used to shoot at—and he had this machine. He made no bones about it, he showed it to us, had it in a box, and told us that he had used it this way, that people would take targets and set them out on top of bunkers, and apparently he had an employee out there who would be behind the bunkers with the receptive end of this machine, and after the targets were fired, they wanted to change targets, he would notify the person who had the machine to take the targets down. That eliminated any chance of accident, and he told us he was going to Cleveland, and he wanted to borrow some money on it.

Q. Did he ask you for the money or ask Plesa?

A. Well, the first time I ever seen him there

(Testimony of George LaClair.)

was very little discussion brought up about the machine, but the second time, he asked if he could borrow some money on the machine. He asked all of us jointly.

Q. How much money did he want to borrow?

A. $75.

Q. Then what occurred? Just tell what happened.

A. Well, we didn't do any business with him, we didn't know if we had any use for it, so finally he got to the point where he would take $50. He said the equipment was worth a couple of hundred dollars, so I bought it for $50.

Q. Did he show you how to use it?

A. He showed us how to use it.

Q. Did it work?

A. It apparently worked with him.

Q. Just explain how it worked and how he showed you how it worked, and so on.

A. According to him, it was very simple. You just plugged it in and there you had it. You had two points that worked.

Q. Did he speak into the transmitter?

A. Yes, sir.

Q. Who had the receiver?

A. We never did hook the receiver up there. He just showed us how the transmitter worked, and the other part apparently went with it. [476]

Q. What did you do with this equipment after you got it from him?

A. I think we had it a couple of days, and we

(Testimony of George LaClair.)

had checked either in or out of the Olympian Hotel that night, so the next day we were downtown and I happened to see a bag in the window, which was the gray bag that carries it now, and we went in and bought the bag to put it in.

Q. What were you fellows going to do with this equipment?

A. He had a good idea on the shooting range, I thought it was a good idea on the golf club, maybe you could use it some way like that, work in conjunction with a golf range and a shooting range. I don't know, use it some way. He claimed he made quite a lot of money with it. It was fast and saved help and stopped chance of accidents. [477]

* * *

Q. What did you do about obtaining more money in order to buy that golf club?

A. We tried to get some people to go in with us on it.

Q. You finally did get in and buy it?

A. Yes, sir.

Q. How long did you operate this golf club?

A. Well, maybe three months. [478]

Q. Who operated it with you?

A. Mr. Casey.

Q. Casey was out there with you, is that right?

A. That's right.

Q. You didn't purchase it until after you were arrested, is that right? A. Yes, sir.

* * *

(Testimony of George LaClair.)

Q. What did you fellows do with this equipment? Tell the [479] Court and jury exactly where you went to and what you did with it, if you broadcast, where you broadcast to, and all the various things you have heard this testimony concerning.

A. Well, we tried to broadcast, we tried, day after day, but we never could make it work.

Q. You never did hear out of it?

A. Never could hear anything.

Q. Did you try to broadcast at the Benjamin Franklin Hotel? A. Yes, sir.

Q. Did you try at the Stratford?

A. Yes, sir.

Q. And you never could hear anything with it?

A. No, sir.

Q. Where were the fellows who were trying to receive?

A. Down on the street, by the windows.

Q. Were they also in the hotel, walking around?

A. Over the halls, and we tried every way to make it work.

Q. And you just couldn't get it to work?

A. No, sir.

Q. Did you broadcast horse races?

A. Well, I can't say as we broadcasted exact horse races. There lots of times have been races or horses mentioned, or things like that. We never tried to broadcast horse racing.

Q. Was your general conversation with Plesa about horses and horse racing? [480]

(Testimony of George LaClair.)

A. Yes, sir.

Q. You heard testimony about "Casey, dance a jig?" A. Yes, sir.

Q. Did you say that over the transmitter?

A. Yes, sir.

Q. There was testimony about you using the word "homodulation," or somebody doing that. Who did that? A. Probably was me.

Q. Why did you say "homodulation"?

A. I didn't say homodulation, I just said testing for modulation.

Q. Who told you that?

A. That is what this fellow down there, that we got it from.

Q. What he told you to say?

A. That's right.

Q. Have you ever been in Everett, Washington? A. No, sir.

Q. Never in your life? A. No, sir.

Q. Did you ever bet on a horse race with this machine, or use this machine for that purpose?

A. No, sir.

Q. Never did? A. No, sir.

Q. You never agreed with these defendants to do any of [481] that kind of betting at all?

A. No, sir.

Q. When did you first learn that it was illegal to broadcast?

A. Well, when I was arrested, I suppose, when they came to the hotel room. We were just sitting

(Testimony of George LaClair.)

around there, four of five of us sitting around talking. We had no idea we were doing any wrong.

Q. This man you obtained the machine from, did you talk to him about any license, whether or not you could use this machine, whether it had to be licensed?

A. Never told us a thing about a license.

Q. Never was any conversation about it, is that right?

A. The only thing he said was, "After you get it set up and working, you make an application." I think he might have said that, but I am not sure.

* * *

Q. Were you at any time hiding this machine from anybody? A. No, sir.

Q. Never tried to hide it? A. No, sir.

Q. Where was the machine going when it was in your car out there in the Motor Ramp Garage?

A. We decided to bring it to a radio man to try to get it [482] so it would work.

* * *

Q. Directing your attention for the Court and jury to 1939 and 1940, were you engaged in the used car business? A. Yes, sir.

Q. At that time, you had some difficulty with the authorities, didn't you, over selling cars?

A. Yes, sir.

Q. Tell the Court and jury what that trouble

(Testimony of George LaClair.)

Mr. Dore: I object to that, your Honor. We can't retry the trial, if there was a trial, at this trial. We would be here for weeks. The Government would have to go to the expense of obtaining witnesses to come back here and testify as to what they testified in the trial against this man somewhere else. I think it is permissible for the man to mention whether he has been in trouble, whether he has ever been convicted of a crime, but we can't retry the case here.

The Court: Be as brief as possible.

Q. Tell the Court and jury what that trouble was.

A. Well, I bought a piece of property and built a garage, bought cars and I had other cars entrusted to me, and I sold some cars out of trust.

* * *

Q. What were you sentenced to?

A. One to two years.

Q. Was that term suspended? A. Yes, sir.

* * *

Cross-Examination

By Mr. Dore:

Q. When did you say you were convicted of that crime? A. I believe it was 1940.

Q. You are sure it wasn't 1942?

A. Well, I guess that was when the trial was, 1942.

(Testimony of George LaClair.)

Q. Were you convicted at the time of the trial or later after the trial? A. At the trial.

Q. You were convicted in 1942?

A. I pleaded guilty. [485]

* * *

Q. Mr. Pomeroy asked you whether this man had showed you how to work it. I believe you said yes, he showed you how to work it? A. Yes.

Q. Did you ever have any radio experience before? A. None whatsoever.

Q. Did any of the other boys?

A. Not to my knowledge.

Q. You say after the purchase of this that you yourself paid for it but that everybody chipped in, is that correct? A. Yes, sir. [488]

* * *

Q. You say you were going to run a golf club and shooting range combination? [489]

A. Yes, sir.

Q. And use the transmitter out there for that?

A. Yes, sir. [490]

* * *

Q. And your common interest was horses, is that correct? A. Yes, sir.

Q. And horse racing?

A. No, I wouldn't say that, just we were friends.

Q. Do you know whether Plesa was engaged in horse racing during that time?

A. That is all he ever done.

Q. You say you broadcast or tried to broadcast

(Testimony of George LaClair.)

with this transmitter and gear at the Benjamin Franklin Hotel day after day, is that correct?

A. Yes, sir. [491]

* * *

Q. Were you at the Benjamin Franklin Hotel on the 7th of February, 1949?

A. I don't remember.

Q. Were you there on February 10, 1949?

A. If that was one of the days I was there.

* * *

Q. Did you try to work this transmitter and radio gear at that time?

* * *

A. I was there for about a week or ten days, however many days I was there. I guess we tried about every day to work it.

Q. On the 5th of February were you at the Benjamin Franklin? A. I imagine I was. [492]

* * *

Q. During that time at the Benjamin Franklin Hotel, did any of these other boys, Mr. Casey and Mr. Plesa, operate that transmitter?

A. Yes, sir.

Q. They did? A. Yes, sir.

Q. How frequently did they operate it?

A. We would all take turns till we got tired.

* * *

Q. Are you familiar with the names of horses?

A. I know quite a few horses.

Q. Are you familiar with the names of tracks?

(Testimony of George LaClair.)

A. I know quite a few tracks.

Q. You know them pretty well, don't you?

A. Well, pretty good.

Q. In fact, you know them very well, don't you?

A. No, I wouldn't say that.

Q. You are modest. Now, you say that it was you that was broadcasting from time to time?

A. Could have been.

Q. I thought you said it was?

A. I said yes, I broadcasted.

Q. Did you broadcast these broadcasts concerning the names of horses and race tracks?

A. Yes. [503]

* * *

Q. You have heard the testimony here of these witnesses, that you recall during the last few days listening to them. Would you say that it was true or false that these broadcasts concerning these races were usually between 1 o'clock and 3 o'clock in the afternoon?

A. Well, I would say that it wasn't true. We broadcasted every time of the day from 10 o'clock in the morning, 7 and 8 o'clock at night we would still be trying.

Q. On what frequency?

A. That I don't know.

Q. You don't know that? A. No, sir.

Q. Do you know anything about frequency?

A. I have learned quite a lot here, but that is about all.

(Testimony of George LaClair.)

Q. Did John Wilcie tell you anything about frequency? A. No, sir.

Q. When John Wilcie sold you that transmitter, did he sell you that 3536 crystal there?

A. Whatever he sold me is there, outside of maybe a battery, a battery or the big bag, we bought the big bag.

Q. I will refer your attention at this time, Mr. LaClair, to Plaintiff's Exhibit 6, the large bag containing the transmitter. I direct your attention to the transmitter contained in that shoe box and ask if that is the transmitter which you say that you bought from John Wilcie? [504]

* * *

Q. For what purpose did they wear that receiver and that equipment?

A. We were trying to make it work.

Q. Why were you trying to make it work?

A. Well, we had bought something, it seems as though it ought to work.

Q. So you decided to work four hours a day at making it work?

A. Well, we had nothing else to do at the time.

Q. You always decided to do that between 1 and 3 o'clock, is that right? A. No, sir.

Q. Wouldn't you say that most frequently you endeavored to operate this equipment between 1 and 3 o'clock?

(Testimony of George LaClair.)

A. No, sir. We have operated it in the morning, in the evening, Sundays.

* * *

Q. You don't remember? I thought you just said a few [509] moments ago that you had never removed it?

A. That isn't what you just asked me. You just asked me if we only had the one crystal. I don't know if the other one was there or not, I can't remember.

Q. Did you ever see Mr. Plesa or Mr. Casey endeavor to operate this transmitter?

A. Yes, sir.

Q. Was that between the dates of February 2 and February 10, 1949? A. Yes, sir.

Q. Where did you see them try to operate this equipment? A. Usually in the hotel room.

Q. Just tell us what hotels, if you recall.

A. Mostly in the Benjamin Franklin.

Q. Mostly at the Benjamin Franklin?

A. Yes, sir.

Q. Where else?

A. At the Stratford Hotel one day we tried to make it work. [510]

* * *

Q. Where would your friends walk when they wearing that apparatus, the receiver and the antenna over their shoulders, and hearing aid?

A. Well, they would usually walk down on the street or in the halls of the hotel, some place, usually

(Testimony of George LaClair.)

on the street where I could see them from the window if I was trying to contact them.

Q. I refer to something Mr. Pomeroy asked you, "Do a jig, Casey, do a dance." Do you remember that occasion? A. Yes, sir.

Q. Tell the Court and jury about that, just what you were doing at this time?

A. Well, I was trying to make contact, and just for conversation; I said it.

Q. Just for conversation?

A. That's right. I guess there was some people in the room and I just done it for conversation.

Q. Could you see Casey or Plesa?

A. I could see them.

Q. Where were they?

A. Down on the street.

Q. At what corner? [511]

A. I don't remember. I know I could see them.

Q. Where was your room at the Benjamin Franklin? A. On the twelfth floor. [512]

* * *

Q. Did Plesa ever go down there and walk around like that? A. Yes.

Q. On numerous occasions? A. Yes, sir.

Q. Between the dates of February 2 and February 10 inclusive? A. Yes, sir.

Q. For what purpose did Plesa go down there and walk around the sidewalks?

A. Trying to make it work.

Q. Did Plesa or Casey know as much about this transmitter and equipment as you did?

(Testimony of George LaClair.)

A. I guess we all had about the same knowledge.

Q. Is it correct, you were the one who usually broadcast? A. No, sir.

Q. Did you all take turns? A. Yes, sir.

Q. Did you ever see Casey or Plesa broadcast with that transmitter between the dates of February 2 and February 10 inclusive?

A. Yes, sir. [514]

* * *

Q. How much money did you have on your arrival in Seattle, Mr. LaClair?

A. I don't know exactly.

Q. You say that between the two of you you had $700 when you left New York?

A. Approximately.

Q. Approximately how much did you spend on the way across the continent?

A. I would say $150 or $200.

Q. Up to $200, so you had approximately $500 when you arrived here in Seattle, between you?

A. Probably. [521]

* * *

EDWARD PLESA

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct-Examination

By Mr. Pomeroy: [529]

* * *

Q. How old were you when you left Omaha?

A. About 13 or 14.

Q. What occupation have you followed since you left home?

A. I took up being a jockey. I took a couple of years exercising horses and learning how, and then I rode.

Q. Then you were a jockey? A. Yes, sir.

Q. You have followed that profession of being a jockey ever since you left Omaha, is that right?

A. Yes, sir.

Q. In that business, have you been in various parts of the United States? A. Yes, sir.

Q. That includes all the major race tracks in the country, is that right? A. Yes, sir. [530]

* * *

Q. For whom are you working now?

A. Frank Brewster.

Q. Where are you employed?

A. Well, I have been employed for him for the last few years, but I am down on the farm now, at Lacey.

(Testimony of Edward Plesa.)

Q. When did you go to Lacey, Washington, to his farm?

A. Last fall after I rode for him at Spokane, and then I went after the Spokane meet, I think it was November 3 or something like that.

Q. And you have been at the farm at Lacey ever since that time, is that right? A. Yes, sir.

Q. Where else in the country had you worked for Frank Brewster?

A. I have worked for him around California and here the last three summers, and I have worked for him in California.

Q. How long have you known George LaClair?

A. About seven years, I would say, six or seven years

Q. Where did you first meet him?

A. In New England, Providence, Rhode Island?

Q. What was the occasion that caused you to meet him there?

A. I was riding at Narragansett and I was boarding with him, room and board.

Q. With him and his wife and family?

A. Yes, and family. [531]

* * *

Q. How long have you known Ralph Casey?

A. Never met him until he came out here.

Q. You never met him until he came out here?

A. No, sir.

Q. That was in January of 1949?

A. Around that time, yes, sir.

(Testimony of Edward Plesa.)

Q. You were in the room and arrested at the same time George LaClair and Ralph Casey were, is that right? A. Yes, sir.

Q. When did you first see George LaClair and Ralph Casey this year?

A. They came down to the farm at Lacey.

Q. Prior to that time, had you been in correspondence with George LaClair?

A. Yes, I have written to him occasionally.

Q. What was that correspondence in reference to?

A. The last one was in reference to him coming out and purchasing a golf club, or leasing it if he could.

Q. What golf club did you have in mind when you wrote to him? [532]

* * *

Q. This Exhibit 5 and 6 which is the transmitter, when did you first see that?

A. I seen it a few days after they came in.

Q. And where did you first see it?

A. Down at Ben Moore's poolroom, I think it was.

Q. Just tell the Court and jury the circumstances under which you first saw it.

A. Well, we was down there and we seen this John Wilcie in a restaurant, I think it was, and I played pool with him once or twice before. I have seen him around.

(Testimony of Edward Plesa.)

Q. Was that prior to the time George LaClair and Ralph Casey came to Olympia?

A. Yes, sir.

Q. You saw this man? A. Yes, sir.

Q. Tell the Court and jury what occurred. [533]

A. We went in and was going to start playing pool or something, fooling around in the poolroom there, and he come on and told us he was broke and wanted to leave, wanted to know if he could sell us something, borrow some money at first, and we couldn't give him none, we didn't know him well enough. So he had something he said he would sell us, so we asked him what it was, and he had a couple of boxes in this poolroom right there, and he showed it to us, and told us it was worth more than he wanted for it, and so we wind up buying it. He told us we could use it for a shooting range or something like that. He says that is what it has been used for.

Q. Is that where you got this transmitter then?

A. Yes, sir.

Q. Then you came on up to Seattle with LaClair and Casey, is that right? A. Yes, sir. [534]

* * *

Q. Did you ever hear anything over the transmitter, over the receiver?

A. Never heard anything

Q. Never heard anything? A. No, sir.

Q. Were you going to check out of the Benjamin Franklin Hotel on the day you were arrested?

(Testimony of Edward Plesa.)

A. No, sir. [536]

* * *

Q. Over this transmitter, did you talk about horse races that happened ten years ago?

A. Well, I wouldn't say for sure. I probably mentioned horse racing, though.

Q. Was there some description of a great ride you made many years ago in Rhode Island, something like that?

A. We used to always rib like that.

Q. Talking about Plesa being the greatest jockey in the world, and so on?

A. Stuff like that, yes.

Q. Did you know at any time that you were transmitting over the air? A. No, I didn't.

Q. You tried to? A. Yes, we did. [538]

Q. And never heard anything? A. No.

* * *

Cross-Examination

By Mr. Dore: [540]

* * *

Q. You say that he sold you this transmitter with the idea that you might use it for a shooting range? Did you ever operate a shooting range?

A. No, sir, never operated anything.

Q. Did you ever buy this golf club?

A. No, I didn't.

Q. Did you ever lease it? A. I didn't.

Q. Did all of you together ever lease it or buy it?

A. No, I didn't lease it or anything, because I

(Testimony of Edward Plesa.)

went down to the farm and went to work. Mr. Casey and LaClair wound up leasing or buying it.

Q. Did Ralph Casey or George LaClair ever lease or buy it?

A. I think they did. They had it at one time.

* * *

Q. Do you know the location of the Earlington Golf Club? A. Very well.

Q. Where is it?

A. By the race track, about half a mile, I would say. It [542] is over to the main highway there.

* * *

Q. You say Casey lived at the Stratford?

A. Yes, sir.

Q. Do you know how long he lived there?

A. No, a day or two, I think.

Q. How long?

A. A couple of days, I think.

Q Do you know what days?

A. No, I don't.

Q. Did you visit him when he was there?

A. Yes, I went down and seen him.

Q. Did he have the transmitter there on that occasion?

A. I don't think so. He might have had it there, I didn't pay much attention to where we had it certain days or where de didn't have it certain days. It is too tough to remember what happened nine month ago. [544]

Q. Did you move it around from place to place?

A. Yes, we have had it with us at various places.

(Testimony of Edward Plesa.)

Q. You aren't sure whether it was in Mr. Casey's room at the Stratford or not?

A. I am not sure. It might have been and probably was at times.

Q. It probably was? A. It probably was.

Q. Do you have any electrical experience?

A. No, sir. [545]

* * *

Q. Have you ever been convicted of a crime?

A. Yes, I have.

Q. What crime?

A. It was called petty larceny. It was a misdemeanor. It was about trying to make a telephone call for nothing.

Q. When was that?

A. I think that was in the spring of 1948, about January, I think.

Q. Where? A. California. [549]

* * *

LOU AKER

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct-Examination

By Mr. Pomeroy:

Q. Please state your name to the Court.

A. Lou Aker.

Q. And your first name is L-o-u? A. Yes.

Q. Where do you live? A. Olympia.

(Testimony of Lou Aker.)

Q. How long have you lived there?

A. About four years.

Q. How long have you lived in the State of Washington? A. 28 years. [555]

* * *

Q. Did you know Eddie Plesa?

A. Yes, I did.

Q. How long had you known him?

A. About nine months.

Q. When did you first meet him, do you recall?

A. About six or seven months ago.

Q. Was it prior to January of this year?

A. Yes.

Q. Prior to Christmas? A. Yes, sir.

Q. Did you meet George LaClair and Ralph Casey, these two defendants here?

A. I met them at Ben Moore's.

Q. How did you happen to meet them?

A. Through Eddie.

Q. Do you recall anybody that was around Ben Moore's [556] where you worked by the name of John Wilcie? A. No I didn't know the man.

Q. Were you present when this transmitter, a big box, was there in the Ben Moore place where you were working? A. Yes, sir.

Q. Who brought that in there?

A. Well, I wouldn't know.

Q. When did you first see it?

A. Well, it was about six months ago, I think.

Q. I am directing your attention to the time you

(Testimony of Lou Aker.)

met George LaClair and Ralph Casey. Was that box there at that time?

A. Yes, he brought it in.

Q. Who brought it in? A. This fellow.

Q. You don't know his name? A. No.

Q. Is it any one of these three men here?

A. No.

Q. What did he do with it when he brought it in there? A. He left it there.

Q. How long was it left there?

A. I would say a couple of days, maybe.

Q. Did you see this same man around with these three defendants, LaClair, Casey and Plesa?

A. A couple of days later, yes. [557]

* * *

RALPH CASEY

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct-Examination

By Mr. Pomeroy: [560]

* * *

Q. Tell the Court and jury what your connection with golf is.

A. When I was young, I used to do a lot of caddying, and I worked at the golf shop at the Glens Falls Country Club. I always had an opportunity to play golf when I wanted. I liked the game

(Testimony of Ralph Casey.)

very much. My brother was very good, and he was a professional over at Lake Lucerne, on the golf club over there. I used to go over there on the golf club with him.

Q. How far is that from Glens Falls? [562]

A. About 18 miles over the mountain.

Q. Have you done some golf instructing?

A. Yes.

Q. When and where did you do golf instructing?

A. I have done golf instructing at the Glens Falls Country Club, and then I done some out here at the Earlington, and different courses. Lake George, I have done some up there during the summer months. [563]

* * *

Q. Exhibits 5 and 6, you are familiar with the exhibits, aren't you? You know what those are?

A. Yes.

Q. When did you first see those?

A. I seen them down in this poolroom down there. That is the first I ever seen them.

Q. Did you and George LaClair obtain them at that poolroom? A. Yes.

Q. From whom did you obtain them?

A. John Wilcie.

Q. Had you ever seen or heard of him before?

A. No, I haven't.

Q. Had you ever been trained in any radio work?

A. No.

Q. Electrical work of any kind? A. No.

(Testimony of Ralph Casey.)

Q. After you obtained this equipment, which is Plaintiff's Exhibits 5 and 6, did you go out and purchase a bag to carry it in? A. Yes, we did.

Q. Who was with you on that occasion?

A. George LaClair and Eddie Plesa. [565]

* * *

Q. Tell the Court and jury in your own words what you did with this equipment, what the idea of it was, and what you were going to do with it.

A. The thing, if we ever got it working, we was going to have it around the golf club and put in a rifle range and things like that, archery or whatever it was going to be used for around there. That is what we were going to have it for, around the golf club, mostly, and the riflle range.

* * *

Q. What were you doing with this equipment, trying to make it work? Just tell the Court and jury what you did.

A. Just trying to talk over it, see if anybody could hear us, to make it work, and it never worked for us.

Q. After you were arrested in this particular case, did you and George LaClair go into this golf business? A. Yes.

Q. What golf club did you finally acquire? [566]

A. The Earlington Golf Club.

Q. How long did you operate it, do you recall?

A. Yes, approximately three months.

(Testimony of Ralph Casey.)

Q. Did you and George both work out there?

A. Yes. [567]

* * *

Q. What other hotels did you register at?

A. I was at the Stratford Hotel and the Arlington Hotel.

Q. Who was down at the Stratford Hotel with you?

A. Eddie Plesa and some fellows used to come down there.

Q. Were you having people up at your rooms in the Benjamin Franklin all the time?

A. Yes.

* * *

Q. Where were you sleeping at the Benjamin Franklin?

A. On the couch most of the time.

Q. Then you went down to the Stratford, is that right? A. That is right. [569]

* * *

Q. Then you went to the Arlington, is that right?

A. Yes.

Q. Did LaClair and Plesa know you were at the Arlington? A. I don't believe they did.

Q. Tell the Court and jury how you happened to go to the Arlington.

A. Well, I just was out one night, and I was doing a little fooling around, playing around. I had someone with me and I didn't want—I just

(Testimony of Ralph Casey.)

signed a different name down there. I didn't want to have her know my name.

Q. And that was down at the Arlington?

A. Yes.

Q. How long did you stay there?

A. I must have been there a couple of days.

Q. Did Plesa or LaClair know you were there?

A. No.

Q. What did you do with that equipment? Did you have it at the Stratford, too? A. Yes.

Q. What did you do with it at the Benjamin Franklin? Tell the Court and jury what you were doing with it.

A. Just trying to get it to work, that's all.

Q. Did you talk into it, too? [570]

A. Yes.

* * *

Cross-Examination

By Mr. Dore: [572]

* * *

Q. Did you move the transmitter from the Benjamin Franklin to the Stratford?

A. The transmitter was in the car, in the Packard, so it was there and I took it up to the room with me.

Q. At the Stratford? [573] A. Yes.

* * *

Q. When did you buy or lease the Earlington Golf Club?

(Testimony of Ralph Casey.)

A. I don't remember the date that I did buy it or lease it.

Q. I didn't hear you.

A. I don't remember the date that I did lease it.

Q. Did you lease it or buy it?

A. We bought it and I leased the golf course.

Q. You bought what?

A. The golf course.

Q. The golf course, the whole course and club house? A. Yes.

Q. What was the contract price?

A. It was around $100,000, I believe it was.

Q. Where did you get the money?

A. We didn't have no money.

Q. How were you going to pay for it?

A. Well, if we had the business, we was going to pay for it.

Q. Where is the golf club located?

A. It is just about a quarter of a mile outside of Renton, by the race track. [577]

* * *

Q. How many hours at a time did you sit and test the machine and broadcast horse racing over it? [581]

A. I don't know. I would sit there and try and test it until I got sick of it, tired of it.

Q. A couple of hours a day?

A. Two, three, four hours, maybe we broadcast during the morning, night, afternoon.

(Testimony of Ralph Casey.)

Q. How many hours did you spend out with the receiver on the streets?

A. Not too long, just go down, see if we could hear anything. We never heard anything, then we would come back up.

Q. Did you ever receive a signal on or about February 7 directing you to go to Franco's?

A. Never.

Q. Have you ever been in Franco's?

A. Not that I recall.

Q. Do you know where Franco's is?

A. No, I don't know.

Q. You do not know?

A. I believe I know where it is. I have been around there, I think I was in there one time.

Q. Do you remember the occasion?

A. I went to make a phone call.

Q. Can you eat in there?

A. That I couldn't tell you.

Q. Have you ever eaten in there?

A. No. [582]

* * *

Redirect Examination

By Mr. Pomeroy:

Q. Directing your attention to this Earlington Golf Club, there was a corporation formed for the purpose of purchasing this? A. Yes.

Q. You were to receive stock out of your earnings in that corporation? A. That's right.

(Testimony of Ralph Casey.)

Q. You and George LaClair had no money to put up? A. Nothing at all. [585]

Q. And the down payment for this golf club was put up through the corporation, by other parties in the corporation? A. That's right.

Q. And the down payment consisted of security of real estate that they owned in the City of Seattle? A. That's right.

Q. There was no actual cash passed?

A. That's right.

Q. And payments were to be made so much a month on the balance? A. That's right.

Q. You were the golf pro and running the golf club? A. Yes.

Q. Refreshing your memory, wasn't March 1 when you entered into possession of the golf club?

A. I imagine it was around that time. I don't remember the date. [586]

* * *

HERBERT ARLOWE

called as a witness by and on behalf of defendants, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Pomeroy:

Q. You previously testified in this case, in the Government's case? A. That is right.

Q. You are the engineer in charge of the FCC office here? A. I am.

Q. Will you state to the jury what the cost of a license required to broadcast, a license for an operator, is?

A. There is no cost for any license.

Q. How long have you been with the FCC?

A. Since October, 1928.

Q. How many cases of this type have you prosecuted in that time?

A. As I remember, one in San Francisco, one in this court.

Q. That is all during the 20 some years you have been with the FCC? A. Correct. [587]

Q. What is the usual procedure of your office in connection with this type of case? Do you usually talk to the people and ask them about what they are doing, about their operations?

A. No, we don't talk to the people.

Q. If you find somebody who is broadcasting, and so forth, don't you go and talk to those people?

A. We listen to what they say on their radio.

(Testimony of Herbert Arlowe.)

Q. After you find where they are, don't you go and talk to the people?

A. Why, of course not.

Q. You don't talk to them at all?

A. We don't make any point of talking to them.

Q. You don't go and ask them what they are doing, finding out where they are broadcasting, what kind of machine they are operating, or anything like that?

A. We endeavor to obtain proof of their operation before we contact them at all in any manner.

Q. Then do you contact them?

A. Contact them with a warrant for their arrest.

Q. You have only done that twice in 20 years, you say, but don't you go and talk to the people, discuss it with them, find out what they are doing?

A. I can't say that we do, no.

Q. Let's take you back to a case in the North End of [588] Seattle, where a man with a garage was doing a little broadcasting with a wire to his home about a block away. Do you recall that case?

A. Not with a garage, no.

Q. What was he operating? A radio shop, was it?

A. Will you give me the name of the person?

Q. I have forgotten. Do you recall such a case out here about Lake City?

A. I remember the Partridge case.

Q. Is that it?

A. Partridge wasn't operating a garage or store.

(Testimony of Herbert Arlowe.)

Q. What was he operating? Some kind of business, wasn't it?

A. No, I think he was working for somebody else at the time.

Q. Do you have cases where somebody is fooling around with electrical equipment, you go out and find out they are doing something illegal, you talk to them, find out what they are doing, in your investigations out of your office?

A. We determine what kind of operation they are doing, first, whether they have ever had a license, what type of operation they are carrying on. If it looks like they are making a broadcast with an unlicensed transmitter and that they are old enough to realize what they are doing, and if they are using the radio for more than just to test or in prepafation for getting a license.

Q. Then you go and talk to them, don't you, and find out [589] what they are doing?

A. No, we don't. We judge from what they say on the air, what they do with it. [590]

* * *

Q. In other words, if any broadcast is just within the State of Washington and doesn't go out into the navigable [591] waters of the United States or across state lines, it isn't a violation of your regulations or laws, is that right?

A. Not exactly right, no.

Q. Will you tell the Court and jury——

A. The communications rules provide that these

(Testimony of Herbert Arlowe.)

low power devices, where the maximum signal is one-sixth of one wave length and at that distance is 15 microvolts per meter, not more, may be used to remotely control radio controlled objects such as garage door operators or other devices that can be operated with a relay. Now, after that rule was adopted, then the manufacturers of phonograph records, phonograph record players, received permission and received type approval numbers for equipment to be used without any antenna, and measurements were made to indicate that on those that received type approval, that the signal did not radiate from that particular receiver, or phonograph oscillator, I should say, more than 15 microvolts per meter, 1 over 2 pi times waves length, roughly, one-sixth wave length.

Mr. Pomeroy: Well, I hope everybody understands it as well as I do now. You may inquire.

Cross-Examination

By Mr. Dore:

Q. Is this similar equipment to the small equipment which Mr. Pomeroy has mentioned and brought into the conversation? [592]

A. I should say not.

Q. What is the difference?

A. This has 30 watts. This would broadcast a signal, a direct signal, by daytime reception that could be easily heard 40 or 50 miles, instead of less than 150 feet. This has power many hundred times greater. A phonograph oscillator is limited.

(Testimony of Herbert Arlowe.)

Q. Is this subject to different regulations than the other?

A. This would be subject to the Commission's regulations, but would certainly not fit within the low power rule. The low power rule would allow maybe only a couple of kilowatts into the tube, the oscillator tube, whereas this transmitter is rated at 30 watts, approximately.

Q. Did these three defendants here ever apply to you for a license to operate any of this small equipment? A. They did not.

Mr. Pomeroy: I will object, if the Court please. It is improper cross-examination. We admit that they never applied for a license, didn't know they had to have one.

The Court: The objection is overruled.

Q. Did they ever apply to you for any license?

A. They did not.

Q. Do you have any license on file for them?

A. There are no licenses on file for them, either in my office or at the Commission's office in Washington. [593]

Q. Is that for an operator's license?

A. For either operators' or station licenses.

Mr. Doré: That is all.

* * *

Court is recessed until 2 o'clock.

(At 11:59 o'clock a.m., Tuesday, September 6, 1949, proceedings recessed until 2:00 o'clock p.m., Tuesday, September 6, 1949.) [594]

GEORGE EASTMAN

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Pomeroy: [595]

* * *

Q. Can you tell the Court and jury what is generally considered what a bookie is, or a bookie place, what it is?

A. Well, a bookie place would be a location where a person can place bets on horse races.

Q. That is what is known generally in law enforcement circles as a bookie place, is that right?

A. Yes, sir.

Q. During January and February of this year, were there any such places in operation in the City of Seattle?

A. To our knowledge, there were no regular establishments. I made a check promptly following this arrest, after reading a newspaper account of it.

Q. And there were no such places in existence?

A. No, sir.

Mr. Pomeroy: You may inquire.

Cross-Examination

By Mr. Dore:

Q. What is the basis of your knowledge, Chief Eastman, on which you base that statement?

A. I have made several statements, sir.

(Testimony of George Eastman.)

Q. Concerning the bookies not operating at that time?

A. Well, I caused an investigation to be made of the possibility of that kind of operation here and there were no open establishments, as I indicated. We have a problem of runners in that field even today.

Q. Do you know of your own personal knowledge whether there were or were not bookie places operating at that time in the City of Seattle?

A. I do not.

Mr. Dore: I will move at this time, Your Honor, to [597] strike all the testimony of this witness. He has no personal knowledge. It is mere hearsay on which he bases this conclusion.

The Court: The Court will let it stand for what it is worth. He has testified on direct and on cross and explained the source of his information and knowledge supporting his answer. The motion is denied.

Mr. Dore: No further questions.

Mr. Pomeroy: That is all.

HOWARD SWEENEY

called as a witness by and on behalf of defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Pomeroy: [598]

* * *

Q. Did you receive a call to go to the Motor Ramp Garage, which is back of the Benjamin Franklin Hotel?

A. We received a call to meet a Mr. Hallock, I believe was the name, at Sixth and Westlake.

Q. Did you do that? A. We did.

Q. After you met this man, where did you go?

A. We went down in the basement of the Motor Ramp Garage, at that address.

Q. Did you go down alone or with someone?

A. I went down with my partner in the prowl car and this Mr. Hallock.

Q. Did you take the prowl car down into the garage? A. Yes.

Q. What did you observe when you reached the downstairs part of the Motor Ramp Garage?

A. Well, our observation, there was several cars parked [599] there, and this Mr. Hallock and another man was there with him.

Q. Who was this other man, do you know?

A. I don't recall his name. He was evidently a partner.

(Testimony of Howard Sweeney.)

Q. Will you stand up, Mr. Ames? Was it Mr. Ames?

A. I believe so. He looks familiar.

Q. What were you told by Ames and Hallock about what you were to do?

A. We were asked to stand by, to assist them, if necessary, in regard to a car that was parked there supposedly with equipment or something that they wished to get.

Q. Did you so stand by with them?

A. Yes.

Q. Did Mr. Hallock stay in the car with you for some period of time?

A. He was in the car there with us, talking.

Q. Do you know whether or not the car which you were supposed to watch had been put out of running commission? A. No, I do not.

Q. You do not know that?

A. Not to my knowledge.

Q. Were there any signs placed on the car to hold it for any reason?

A. I recall a piece of white paper stuck under the windshield wiper to the effect that the car was not to be moved.

Q. The car was not to be moved? Was that signed by [600] anyone, do you know?

A. Not any name that I recall.

Q. Was it signed by a Government agency, such as the FCC, rather than a name?

A. I don't recall that.

(Testimony of Howard Sweeney.)

Q. Did someone finally come down into this garage in order to go into this car? A. Yes.

Q. What did you do when this man appeared?

A. I went over and talked to him, asked him who he was and what he was down there for.

Q. What did he tell you?

A. He told us he came down to get this car in question.

Q. Was he searched by you at that time?

A. No.

Q. Do you recall whether you frisked him or not?

A. I don't recall frisking him. I asked him if he had any identification as to who he was, and he presented some identification. [601]

* * *

COURT'S INSTRUCTIONS

Count I of the indictment as returned by the Grand Jury reads as follows:

"COUNT I

"That on or about February 7, 1949, at Seattle, in the Northern Division of the Western District of Washington, Ralph Casey, Edward Plesa and George LaClair, and each of them did unlawfully, wilfully and knowingly use and operate certain apparatus for the transmission of energy, communications and signals by radio without a station license having first been granted by the Federal Communi-

cations [611] Commission in accordance with Section 301, Title 47, United States Code, authorizing the use and operation of certain apparatus used and operated by the said defendants as aforesaid, and that said defendants did unlawfully, wilfully and knowingly by the use and operation of the apparatus aforesaid transmit energy, communications and signals by radio from one place in the State of Washington, to wit, Seattle, to a place in another state, to wit, Portland, Oregon."

All in violation of the law.

The defendants have entered a plea of not guilty to Count I. This plea places upon the Government the burden to prove by the evidence beyond a reasonable doubt each material allegation of that count.

There are four material allegations in this count, namely:

1. That the alleged offense occurred in Seattle on or about February 7, 1949.

2. That on said date no radio station license had been issued to Ralph Casey, Edward Plesa or George LaClair by the Federal Communications Commission.

3. That the said defendants did unlawfully, wilfully and knowingly use and operate a radio for transmitting a radio signal.

4. That the said radio signal was transmitted from [612] Seattle, Washington, to Portland, Oregon.

If you find from the evidence beyond a reasonable doubt that these four allegations are true as to all of the defendants, then it is your duty to find all the defendants guilty as charged in Count I. If you find from the evidence beyond a reasonable doubt that these four allegations are true as to two of the defendants and not true as to the third defendant, then it is your duty to find such two defendants guilty of Count I and the third defendant not guilty as to Count I. Likewise, if you find from the evidence beyond a reasonable doubt that these four allegations are true as to only one defendant and not true as to the other two, then it is your duty to find the one defendant guilty of Count I and the other two defendants not guilty as to Count I. Likewise, if you do not find from the evidence beyond a reasonable doubt that these four allegations are true as to any of the defendants; then you must acquit all three defendants as to Count I.

The second count of the indictment as returned by the Grand Jury reads as follows:

"COUNT II

"That on or about February 5, 1949, at Seattle, in the Northern Division of the Western District of Washington, Ralph Casey, Edward Plesa and George LaClair and each of them did unlawfully, wilfully and knowingly use and operate [613] certain apparatus for the transmission of energy, communications and signals by radio without a station license having first been granted by the Federal Communications Commission in accordance with

Section 301, Title 47, United States Code, authorizing the use and operation of certain apparatus used and operated by the said defendants as aforesaid, and that said defendants did unlawfully, wilfully, and knowingly by the use and operation of the apparatus aforesaid transmit energy, communications and signals by radio from one place in the State of Washington, to wit, Seattle, to a vessel sailing upon the navigable waters of the United States, to wit, Puget Sound." All in violation of the law.

The defendants have entered a plea of not guilty to Count II. This plea places upon the Government the burden to prove by the evidence beyond a reasonable doubt each material allegation in that count.

There are four material allegations in this count, namely:

1. That the alleged offense occurred in Seattle on or about February 5, 1949.

2. That on said date no radio station license had been issued to Ralph Casey, Edward Plesa or George LaClair by the Federal Communications Commission.

3. That the said defendants did unlawfully, wilfully [614] and knowingly use and operate a radio for transmitting a radio signal.

4. That said radio signal was transmitted from Seattle to a vessel upon the navigable waters of Puget Sound.

If you find from the evidence beyond a reasonable doubt that these four allegations are true as to all of the defendants, then it is your duty to find all the defendants guilty as charged in Count II. If you find from the evidence beyond a reasonable doubt that these four allegations are true as to two of the defendants and not true as to the third defendant, then it is your duty to find such two defendants guilty of Count II and the third defendant not guilty as to Count II. Likewise, if you find from the evidence beyond a reasonable doubt that these four allegations are true as to only one defendant and not true as to the other two, then it is your duty to find the one defendant guilty of Count II and the other two defendants not guilty as to Count II. Likewise, if you do not find from the evidence beond a reasonable doubt that these four allegations are true as to any of the defendants, then you must acquit all three defendants as to Count II.

As to Count III, the indictment charges:

"COUNT III

"That on or about February 10, 1949, at Seattle, in the Northern Division of the Western District of Washington, [615] Ralph Casey, Edward Plesa and George LaClair and each of them did unlawfully, wilfully and knowingly use and operate certain apparatus for the transmission of energy, communications and signals by radio without a station license having first been granted by the Federal Communications Commission in accordance with Section 301, Title 47, United States Code, authorizing the use

and operation of certain apparatus used and operated by the said defendants as aforesaid, and that defendants did unlawfully, wilfully and knowingly by the use and operation of the apparatus aforesaid transmit energy, communications and signals by radio from one place within the State of Washington, to wit, Seattle, to other places within the State of Washington and the effects of such use and operation extended beyond the borders of the said State of Washington, and caused interference with the transmission of energy, communications and signals from places in other states to places within the State of Washington."

All in violation of the law.

The defendants have entered a plea of Not Guilty to Count III. This plea places upon the Government the burden to prove by the evidence beyond a reasonable doubt each material allegation as to Count III.

There are four material allegations in this count, namely: [616]

1. That the alleged offense occurred in Seattle on or about February 10, 1949.

2. That on said date no radio station license had been issued to Ralph Casey, Edward Plesa or George LaClair by the Federal Communications Commission.

3. That the said defendants did unlawfully, wilfully and knowingly use and operate a radio for transmitting a radio signal.

4. That said radio signal extended beyond the borders of the State of Washington or the effects of such signal caused interference with transmission of other radio signals from places outside the State of Washington to places within the State of Washington.

If you find from the evidence beyond a reasonable doubt that these four allegations are true as to all of the defendants, then it is your duty to find all the defendants guilty as to Count III. If you find from the evidence beyond a reasonable doubt that these four allegations are true as to two of the defendants and not true as to the third defendant, then it is your duty to find such two defendants guilty and the third defendant not guilty in respect to Count III. If you find from the evidence beyond a reasonable doubt that these four allegations are true as to only one defendant and not true as to the other two, then it is your duty to find the one defendant guilty and [617] the other two defendants not guilty as to Count III. If you do not find from the evidence beyond a reasonable doubt that these four allegations are true as to any of the defendants, then you must acquit all three defendants as to Count III.

The indictment as to Count IV charges:

"COUNT IV.

"That on or about February 7, 1949, at Seattle, in the Northern Division of the Western District of Washington, Ralph Casey, Edward Plesa and George LaClair and each of them did unlawfully,

wilfully and knowingly use and operate certain apparatus for the transmission of energy, communications and signals by radio from one place within the State of Washington, to wit, Seattle, to a place in another State, to wit, Portland, Oregon, without a radio operator's license having first been issued by the Federal Communications Commission to said defendants in accordance with Section 318 of Title 47, United States Code, the said certain apparatus used and operated by the said defendants being then and there set up as a radio station of the style and type for which a radio station license is required.'' All in violation of the law.

The defendants have entered a plea of not guilty to Count IV. This plea places upon the Government the burden to prove by the evidence beyond a reasonable doubt each [618] material allegation in that count.

There are four material allegations in Count IV, namely:

1. That the offense occurred on February 7, 1949, at Seattle, Washington.

2. That on said date a radio operator's license had not been issued to Ralph Casey, Edward Plesa or George LaClair by the Federal Communications Commission.

3. That the said defendants did unlawfully, wilfully and knowingly use and operate a radio station.

4. That in using and operating said radio sta-

tion the defendants did transmit a radio signal from Seattle, Washington, to Portland, Oregon.

If you find from the evidence beyond a reasonable doubt that these four allegations are true as to all of the defendants, then it is your duty to find all the defendants guilty as charged in Count IV. If you find from the evidence beyond a reasonable doubt that these four allegations are true as to two of the defendants and not true as to the third defendant, then it is your duty to find such two defendants guilty and the third defendant not guilty as to Count IV. If you so find that these four allegations are true as to only one defendant and not true as to the other two, then it is your duty to find the one defendant guilty and the other two defendants not guilty in respect to Count IV. If you do not find from the evidence beyond a [619] reasonable doubt that these four allegations are true as to any of the defendants, then you must acquit all three defendants as to Count IV.

The indictment for and in Count V thereof charges:

"COUNT V.

"That on or about February 5, 1949, at Seattle, in the Northern Division of the Western District of Washington, Ralph Casey, Edward Plesa and George LaClair and each of them did unlawfully, wilfully and knowingly use and operate certain apparatus for the transmission of energy, communications and signals by radio from one place within the State of Washington, to wit, Seattle, to a vessel

sailing upon the navigable waters of the United States, to wit, Puget Sound, without a radio operator's license having first been issued by the Federal Communications Commission to said defendants. In accordance with Section 318 of Title 47, United States Code, the said certain apparatus used and operated by the said defendants being then and there set up as a radio station of the style and type for which a radio station license is required." All in violation of the law.

The defendants have entered a plea of not guilty to Count V. This plea places upon the Government the burden to prove by the evidence beyond a reasonable doubt each material allegation in that count.

That count contains these four material allegations, namely:

1. That the offense occurred on February 5, 1949, at Seattle, Washington.

2. That on said date a radio operator's license had not been issued to Ralph Casey, Edward Plesa or George LaClair by the Federal Communications Commission.

3. That the said defendants did unlawfully, willfully and knowingly use and operate a radio station.

4. That in using and operating said radio station the defendants did transmit a radio signal from Seattle to a vessel sailing upon the navigable waters of Puget Sound.

If you find from the evidence beyond a reasonable doubt that these four allegations are true as to all

of the defendants, then it is your duty to find all the defendants guilty as charged in Count V. If you so find that these four allegations are true as to two of the defendants and not true as to the third defendant, then it is your duty to find such two defendants guilty and the third defendant not guilty in respect to Count V. If you so find that these four allegations are true as to only one defendant and not true as to the other two defendants, then it is your duty to find such one defendant guilty and the other two defendants not guilty as to Count V. If you do not so find that these four allegations are true as to any of [621] the defendants, then you must acquit all three defendants as to Count V.

The indictment further charges as to Count VI:

"COUNT VI.

"That on or about February 10, 1949, at Seattle, in the Northern Division of the Western District of Washington, Ralph Casey, Edward Plesa and George LaClair and each of them did unlawully, wilfully and knowingly use and operate certain apparatus for the transmission of energy, communications and signals by radio from one place within the State of Washington, to wit, Seattle, to other places within the State of Washington and the effects of such use and operation extended beyond the borders of the said State of Washington and caused interference with the transmission of energy, communications and signals from places in other states to places within the State of Washington, without a radio operator's license having first been issued by the

Federal Communications Commission to said defendants in accordance with Section 318 of Title 47, United States Code, the said certain apparatus used and operated by the said defendants being then and there set up as a radio station of the style and type for which a radio station license is required."

All in violation of the law.

The defendants have entered a plea of not guilty to [622] Count VI. This plea places upon the Government the burden to prove by the evidence beyond a reasonable doubt each material allegation contained in Count VI.

There are four material allegations contained in that count, namely:

1. That the offense occurred on February 10, 1949, at Seattle, Washington.

2. That on said date a radio operator's license had not been issued to Ralph Casey, Edward Plesa or George LaClair by the Federal Communications Commission.

3. That the said defendants did unlawfully, wilfully and knowingly use and operate a radio station.

4. That in using and operating said radio station the defendants did transmit a radio signal from Seattle, Washington, to points outside of the State of Washington, or that the effects of such signal interfered with the transmission of other radio signals originating outside the State of Washington, and transmitted to points within the State of Washington.

If you find from the evidence beyond a reasonable doubt that these four allegations are true as to all of the defendants, then it is your duty to find all the defendants guilty as charged in Count VI. If you so find that these four allegations are true as to two of the defendants and not true as to the third defendant, then it is your duty [623] to find such two defendants guilty and the third defendant not guilty in respect to Count VI. If you so find that these four allegations are true as to only one defendant and not true as to the other two, then it is your duty to find such one defendant guilty and such other two defendants not guilty as to Count VI. If you do not so find that these four allegations are true as to any of the defendants, then you must acquit all three defendants as to Count VI.

Count VII of the indictment charges the three defendants with having entered into a conspiracy with each other to operate a radio station without first obtaining a station license or a radio operator's license and in so doing to transmit radio signals across a state boundary line, or to vessels upon navigable waters, or to transmit signals which would interfere with the reception of other radio signals originating in one state and received in another.

To this count likewise the defendants have pleaded not guilty, and that places upon the Government the burden to prove by the evidence beyond a reasonable doubt all of the material allegations of such Count VII.

A conspiracy, as the word is used in the conspiracy law and in Count VII of this indictment, is an agreement between two or more persons acting upon a

common purpose to commit an offense, insofar as this case is concerned, [624] the particular offenses, or one of them, described in Count VII.

There can be no conspiracy of any kind unless three elements are present. Those are, first, the act of conspiring together of two or more persons; second, to commit the particular offense charged in the indictment; and, third, the doing of something in furtherance of the unlawful design.

There is no such thing as one person conspiring. A person who alone plans and commits a criminal act is not guilty of conspiracy.

It is not necessary to render a person guilty of conspiracy that he be one of the original persons forming the conspiracy. He may have joined it after its formation and if so he thereby becomes as guilty as one of the original conspirators.

However, to render such a person guilty under such law it is necessary that after he has become a member of such conspiracy, some act be done by one of the conspirators toward carrying out the unlawful agreement of the conspiracy.

In order to establish the guilt of a particular defendant under the conspiracy count it is necessary that the Government prove by the evidence beyond a reasonable doubt first, that the conspiracy was formed as alleged, and that [625] it was entered into by the particular defendant, as charged, and second, that within the jurisdiction of this court, after that particular defendant became a member of such conspiracy, one or more of the overt acts of the conspiracy was committed as alleged in the indictment.

The common design, purpose, agreement and co-operation among the participants are the essence of the conspiracy. To prove that a conspiracy existed and was in operation, it is not necessary that two or more persons entered into a written or express agreement or made any formal declaration acknowledging membership in the conspiracy, but it is necessary to prove by competent evidence beyond a reasonable doubt that they cooperated in furtherance of a common unlawful plan previously formed. Conspiracy may exist either to do something unlawful or to do a lawful thing in an unlawful way.

In order to establish a criminal conspiracy, a corrupt motive or intent must be shown. There must be an evil design, a wrongful purpose.

It is not necessary that the Government establish the time of the formation of the conspiracy exactly. If a conspiracy existed, it ended upon the arrest of the defendants, and no acts done by any one of them thereafter who was a member of the conspiracy can be considered by you.

You will note that Count VII of the indictment purporting [626] to charge conspiracy sets forth a number of so-called overt acts, but you are instructed that mere proof of an overt act, or overt acts, as charged in that count, alone proves no conspiracy, without further proof beyond a reasonable doubt of an unlawful agreement entered into by two or more persons named in the indictment to commit the unlawful acts charged in Count VII; this is true even though evidence shows the overt act or overt acts alleged to be unlawful in themselves.

You are further instructed that such overt act, or overt acts, must be found from the evidence to be clearly referrable to the unlawful agreement, provided you find from the evidence that such unlawful agreement in fact did exist as alleged in Count VII. Even participation in the offense itself which is alleged to be the object of the conspiracy, does not necessarily prove a participant guilty of such conspiracy. There must in addition thereto be proof beyond a reasonable doubt of the unlawful agreement and participation therein by the particular defendant or defendants with knowledge on his or their part of the existence of the unlawful agreement charged in the indictment. These matters must be proved by the evidence beyond a reasonable doubt. The unlawful agreement is the gist of the offense of conspiracy and unless you find two or more of the persons named in the indictment so entered into the unlawful [627] agreement specifically charged in Count VII, and actively participated therein and that one or more of the defendants committed at least one of the overt acts alleged in that count, with knowledge of such unlawful agreement, you are not at liberty to return a verdict of guilty herein with respect to Count VII of the indictment.

You are instructed that a crime may consist of many acts, which must all be committed in order to complete the offense, but each person present, consenting to the commission of the offense, and doing any one act which is either an ingredient of the crime or immediately connected with or leading to

its commission, is as much a principal as if he had with his own hand committed the whole offense.

You are instructed that to find any defendant guilty of the offenses charged in the seven counts of the indictment, it is not necessary to find that each defendant personally committed all of the acts charged. If you find beyond a reasonable doubt that any defendant aided, abetted, counseled, commanded, induced or procured the commission of the crime, then that defendant is just as guilty as if he individually perpetrated the crime himself, and in that event you must find him guilty as charged.

Intent is an ingredient of crime. It is psychologically impossible for you to enter into the minds of the defendants and determine the intent with which they operated. [628] You must, therefore, determine the motive, purpose and intent from the testimony which has been presented, and you will consider all of the circumstances disclosed by the testimony of the witnesses, bearing in mind that the law presumes that every man intends the legitimate consequences of his own acts. Wrongful acts, knowingly or intentionally committed, cannot be justified on the grounds of innocent intent.

Before any man can be convicted of a crime there must be established beyond a reasonable doubt that what he did was done purposefully, with intent to violate the law. No person can be convicted of a crime because he made a mistake in good faith.

Before you can find the defendants guilty in this case, the Government must have proven to you beyond a reasonable doubt that the defendants had

an intention to violate the statutes requiring the licensing of radio stations and operators.

The Court further instructs the jury that mere suspicions are not proof of guilt. One accused of crime must be found not guilty unless the fact of his guilt is proven beyond a reasonable doubt as defined in these instructions.

There are two kinds of evidence. Direct or positive, and circumstantial. Direct and positive testimony is that which a person observes or sees or which is susceptible of [629] demonstration by the senses, and circumstantial evidence is proof of such facts and circumstances concerning the conduct of the parties which conclude or lead to a certain inevitable conclusion. Circumstantial evidence is legal and competent as a means of proving guilt in a criminal case, but the circumstances must be consistent with each other, consistent with the guilt of the parties charged, inconsistent with their innocence and inconsistent with every other reasonable hypothesis except that of guilt, and when circumstantial evidence is of that character, it is alone sufficient to convict. You will review all the circumstances in the light of this instruction. [630]

* * *

Counsel, have I overlooked anything?

If there are any exception to be noted, I shall, upon being advised of that, temporarily excuse the jury for that purpose as the rules provide. Are there any exceptions to be noted?

Mr. Dore: No exceptions by the Government.

Mr. Royce: I have one comment I would like to make in the absence of the jury, Your Honor.

The Court: The rules provide that these proceedings may be had in the absence of the jury.

(Jury admonished by the Court.)

The Court: You will now temporarily retire.

(Jury retires.)

The Court: The defendants may now note their exceptions.

Mr. Royce: If the Court please, my comment has to do with reference to the matter the Court struck from the overt acts of Count VII of the indictment. It is my understanding that the Government has now amended the indictment so that the indictment as it goes to the jury will not contain those stricken.

The Court: The Court should advise the jury again in this connection as to the withdrawal of those overt acts. My records show overt acts 1-5 inclusive stricken, also over acts 11, 12, 13 and 14 stricken, and no more.

Mr. Royce: That is correct.

The Court: The Court will withdraw those from the jury. Is there any objection?

Mr. Dore: No objection.

The Court: Is there anything else to be noted in the absence of the jury? [636]

Mr. Royce: No further exceptions, Your Honor.

The Court: Bring in the jury.

(Jury returns.)

The Court: All of the jurors have returned to

their places as before and all parties with their counsel are present.

The Court will advise the jury, and remind the jury if they have already been advised, that—this respects Count VII only, the conspiracy count—at the close of plaintiff's case in chief, the Court struck and the jury will totally disregard the following numbered overt acts mentioned in connection with Count VII: over acts 1-5 inclusive have been stricken, and the jury will disregard each and all of those five overt acts in Count VII. Likewise, overt acts 11, 12, 13 and 14 have been stricken out and the jury will disregard each and all of those overt acts.

All other overt acts alleged in that indictment, namely: 6-10 inclusive and 15-18 inclusive are now before the jury. Those last ones mentioned as being now before the jury are likewise contained in said Count VII.

I am going to repeat that. First, I will mention those overt acts which are stricken and withdrawn from the jury's consideration. As to Count VII, overt acts 1-5 inclusive are stricken and withdrawn from the jury's consideration. Likewise stricken and withdrawn are overt acts 11, 12, 13 [637] and 14 in Count VII. All other overt acts in that count are before the jury for the jury's proper consideration under the evidence in this case and the Court's instructions.

Are there any other things to be said or done before the Court submits the case to the jury?

Mr. Dore: None, Your Honor.

Mr. Royce: None for the defendants, Your Honor.

The Court: The clerk will now swear the bailiff. [638]

* * *

Certificate

I, Patricia Stewart, do hereby certify that I am official court reporter for the above-entitled court, and as such was in attendance upon the hearing of the foregoing matter.

I further certify that the above transcript is a true and correct record of the matters as therein set forth.

/s/ PATRICIA STEWART,
Official Court Reporter.

[Endorsed]: Filed April 7, 1950.

[Endorsed]: No. 12387. United States Court of Appeals for the Ninth Circuit. Ralph Casey, Edward Plesa and George LaClair, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed April 13, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

Criminal Action No. 12387

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RALPH CASEY, GEORGE LaCLAIR, and EDWARD PLESA,

Defendants.

STATEMENT OF POINTS ON WHICH APPELLANTS WILL RELY

The appellants will rey on the following points in this proceeding:

1. The District Court erred in denying appellants' motion to suppress evidence obtained by unlawful search and seizure and to return evidence seized thereby, and erred in refusing to exclude said evidence at the trial.

2. The District Court erred in denying appellants' motion to exclude evidence seized by unlawful search and seizure at the trial.

3. The District Court erred in denying appellants' motion to dismiss the indictment and each of the counts thereunder as to all three appellants.

4. The District Court erred in admitting the testimony of two witnesses as to messages intercepted by them upon failure of the Government to

connect same with the appellants and in denying appellants' motion to strike same by its failure to rule thereon.

5. The District Court erred in the admission of testimony as to signals and receptions obtained by unlawful interception thereof in violation of Section 605, Title 47, U. S. C., and by denying appellants' motions to exclude same.

6. The District Court erred in admitting testimony of a federal agent as to the violation of Section 301, Title 47, U. S. C., on Count II where such evidence was obtained by entrapment.

7. The District Court erred in its charge to the jury to the effect that each of the appellants could be found guilty of Counts I, II, III, IV, V and VI if they had aided and abetted the party transmitting energy or a signal in violation of Section 301, Title 47, U. S. C., although none of the counts of the indictment charge any of the appellants as principals before or after the fact and with aiding and abetting in the commission of this offense.

8. The District Court erred in its charge on Count II in failing to instruct on the issue of entrapment.

9. The District Court erred in its charge to the jury in that it did not define "wilfully" and "knowingly" and the meaning of a "purposeful and deliberate" failure to comply with the licensing provisions of Title 47, Sections 301 and 318, U. S. C.

10. The District Court ered in its charge to the jury on Count IV that the use and operation of a radio station without a license was a violation of Section 318, Title 47, U. S. C.; that the count on which the charge was based as set forth in the indictment was the broadcasting without an operator's license; that two separate and distinct offenses were incorporated in the Court's charge on Count IV and that said charge was not in accordance with the law and was prejudicially erroneous.

11. The District Court erred in its charge to the jury on Count V that the use and operation of a radio station without a license was a violation of Section 318, Title 47, U. S. C.; that the count on which the charge was based as set forth in the indictment was the broadcasting without an operator's license; that two separate and distinct offenses were incorporated in the Court's charge on Count V and that said charge was not in accordance with the law and was prejudically erroneous.

12. The District Court erred in its charge to the jury on Count VI that the use and operation of a radio station without a license was a violation of Section 318, Title 47, U. S. C.; that the count on which the charge was based as set forth in the indictment was the broadcasting without an operator's license; that two separate and distinct offenses were incorporated in the Court's charge on Count VI and that said charge was not in accordance with the law and was prejudicially erroneous.

13. The District Court erred in its failure to set aside the verdict of the jury on Counts I, II, III, IV, V and VI of the indictment as being contrary to the weight of the evidence.

14. The District Court erred in entering judgment of conviction on all six counts as to all three appellants..

15. The District Court erred in its failure to grant appellants' motion for a new trial.

Filed: April 15, 1950.

/s/ F. M. REISCHLING,
Attorney for Appellants, 634 Central Building, Seattle, Washington.

[Endorsed]: Filed April 17, 1950.

No. 12387

United States Court of Appeals

For the Ninth Circuit

RALPH CASEY, EDWARD PLESA and GEORGE LaCLAIR,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court,
Western District of Washington,
Northern Division.

Proceedings Had in the United States Court of Appeals for the Ninth Circuit

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday, April 24, 1951.

Before: Healy, Circuit Judge;
Fee and Solomon, District Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. F. M. Reischling, counsel for appellants, and by Mr. John Dore, Assistant United States Attorney, counsel for appellee, and submitted to the court for consideration and decision.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Wednesday, June 27, 1951.

Before: Healy, Circuit Judge;
Fee and Solomon, District Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT

Ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

United States Court of Appeals
for the Ninth Circuit

No. 12,387

RALPH CASEY, GEORGE LaCLAIR and EDWARD PLESA,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

June 27, 1951

Appeal from the United States District Court for the Western District of Washington, Northern Division

Before: Healy, Circuit Judge;
Fee and Solomon, District Judges.

Solomon, District Judge.

OPINION

Appellants were jointly indicted for violating provisions of the Federal Communications Act, 47 U.S.C.A. §151 et seq., hereinafter referred to as the "Acts." The indictment contained seven counts.

The first three counts charged that the appellants violated §301 of the Act in that they "did unlawfully, willfully, and knowingly use and operate certain apparatus for the transmission of energy, communications, and signals by radio without a station license" issued by the Federal Communica-

tions Commission hereinafter called the "Commission." In one of such counts, the communication was from Seattle to Portland; in another, from Seattle to a vessel sailing upon navigable waters; and in the third, from one place to another place in the State of Washington but the effects thereof extended beyond the borders of such State.

The second three counts charged that the appellants violated §318 of the Act, in that they used and operated the apparatus and transmitted the communications and signals by radio without a radio operator's license issued by the Commission. The seventh count charged appellants with a conspiracy. The defendants were convicted on the first six counts and were acquitted on the conspiracy count.

The appeal raises five issues:

1. Admissibility of evidence obtained by an alleged unlawful search and seizure.

2. Admissibility of radio messages between appellants.

3. Correctness of instructions.

4. Sufficiency of the evidence to sustain the verdict.

5. Constitutionality of portions of the Act.

Appellant LaClair filed a timely motion to suppress as evidence certain radio equipment seized from his Packard automobile and to direct that the equipment be returned to him. In his affidavit, he stated that Federal officers "seized and searched

affiant's automobile which was parked in a garage separate from and at a distance from said hotel and took from a certain automobile some radio equipment and other articles." This motion was denied. Thereafter, at the trial over appellants' objection, the Government was permitted to introduce in evidence such radio equipment.

The evidence showed that, during the latter part of January, 1949, the Commission in Seattle received information from the Everett, Washington police that an unlicensed radio transmitter had been used as part of a scheme to bilk race track bookies. This scheme operated as follows: In addition to accomplices at various race tracks, three men worked as a team. The first one learned the name of the winning horse by telephone direct from the track. The second, standing near the bookie's place of business, received this information from the first by radio. The third, stationed beside the second entered the bookie's place of business and placed a bet on the winning horse after the race had been run.

Early in February, two amateur radio operators in Oregon reported to the Commission that they had heard voice signals, without call letters, on a frequency of 3540 kilocycles, which is on a portion of the band reserved for code operation. The messages dealt with horse racing and contained numerous statements such as "testing for voice modulation—do you hear me—raise your hand if you hear me." Similar messages on another frequency were

reported by a Seattle amateur and by investigators on a Coast Guard cutter in Puget Sound.

During this period, the Commission was making its own investigation. On several successive days, in downtown Seattle, investigators, equipped with mobile direction finding equipment, heard the same voices and similar messages on a frequency of 3540 kilocycles. The direction finder showed that the broadcasts came from different locations and this indicated that the station was being moved almost daily. Each time, however, the voices went off the air before the place from which the broadcast originated, was discovered. On February 10, when the investigators heard the same voices again, they determined that the broadcast emanated from the Benjamin Franklin Hotel. By the use of instruments, they detected that the signals were coming from room 1217. When they stood outside the door of room 1217, they recognized the voices as being the same that they had heard over the radio. They learned that a number of long distance telephone calls had been placed from this room and that the registered occupants were the three appellants in this case.

The chief investigator left the hotel and went to the United States Court House to obtain a warrant for appellants' arrest. Upon arriving at the Court House, he was informed by the hotel manager that the appellants were about to check out and that two pieces of luggage had been removed from their room to an automobile parked in the Motor Ramp Garage, a public garage located near the hotel. An investigator called the garage and requested an

attendant to disable the car so that it could not be moved. This was done. Immediately thereafter, two investigators went to the garage where they were shown a 1948 Packard convertible coupe belonging to appellant LaClair. At their request, the attendant unlocked the car and searched it. He found two bags, one of which contained the radio equipment. These investigators together with a Seattle police officer whom they had called, remained at the garage.

In the meantime, the chief investigator, having obtained a warrant for the arrest of appellants, returned to the hotel and placed them under arrest. Their room was searched but no equipment was found therein. The chief investigator then went to the garage where he found a friend of appellants, who had attempted to obtain possession of the car without a claim check, talking to the investigators. The chief investigator removed the two bags from the car and seized them.

Appellants contend that the trial court erred in denying the motion to suppress the evidence so obtained, and in permitting such evidence to be introduced over their objections, for the reason that the search and seizure were unlawful, having been made without a warrant, not incidental to a lawful arrest, and solely for the purpose of securing evidence with which to support an indictment.

It is unnecessary to consider whether the search and seizure in this case violated constitutional rights, for the reason that the right to immunity from unreasonable searches and seizures is a per-

sonal right and can only be asserted by one who claims ownership or right to possession of the premises searched or the property seized. Lewis v. United States, 9 Cir., 1925, 6 F. 2d 222, 223; Armstrong v. United States, 9 Cir., 1926, 16 F. 2d 62, 65; Connolly v. Medalie, 2 Cir., 1932, 58 F. 2d 629, 630; In re Nassetta, 2 Cir., 1942, 125 F. 2d 924, 925; Chepo v. United States, 3 Cir., 1930, 46 F. 2d 71.

None of the appellants claimed ownership or interest in the Motor Ramp Garage, the place where the search occurred. Therefore, they had no standing to complain of the search. Nor did the appellants claim ownership or an interest in the radio equipment seized in the showing made on the motion to suppress. Therefore they were not entitled to prevent the introduction in evidence of the articles seized in such search.

The conclusion above reached is not affected by the circumstance that the articles seized were located in appellant LaClair's automobile. In our opinion, since appellant LaClair did not claim ownership or an interest in the articles seized, any constitutional immunity to which he might otherwise have been entitled with respect to his automobile and its contents was lost when he placed the garage, a bailee for hire, in possession of his automobile.

There is no merit to appellants contention that the trial court erred in admitting in evidence the substance of radio messages between appellants. §605 of the Act (47 U.S.C.A. 605), which prohibits the

interception and divulgence of communications without the consent or approval of the sender, refers to communications over licensed facilities. The appellants were unlicensed operators transmitting voice messages over an unlicensed station without call letters, on a portion of the band reserved for Morse Code operations. The protections of the Act were never intended for nor do they cover, such communications which are themselves illegal.

Appellants claim that the instructions with repect to Counts IV, V and VI were erroneous. Such counts charged that the appellants, in violation of §318, operated a radio station without an operator's license issued by the Commission. The instructions on such counts required the jury to find that appellants failed to have an operator's license. The instructions also required the jury to find that appellants "unlawfully, wilfully, and knowingly used and operated a radio station" which, appellants assert, is a violation of §301, not §318. According to appellants' theory, the jury was required to find that they violated both §301 and §318 in order to convict them of having violated only §301. Appellants' interpretation, if correct, placed an added burden on the Government and in no way prejudiced the appellants.

Appellants also complain that the court erred in failing to define a "radio station" and conduct constituting a "wilful and knowing violation of the section." Radio stations are in such common use that no definition was needed. The court instructed on intent and on the elements to be considered in

determining whether the violations were knowing and willful. It was unecessary to repeat such instruction for each count.

Appellants' contention that the evidence was insufficient to warrant convictions on any count is without merit. The evidence that the appellants operated a radio station without either a station license or an operator's license is undisputed. There is ample evidence to support the jury's findings that the violations were knowing and willful.

In their last specification, appellants contend that §318 of the Act is unconstitutional in that it contains an unlawful delegation of legislative authority to the Commission. §318 limits the operation of a radio station to a person holding an operator's license issued by the Commission, subject to the following proviso:

> "That the Commission, if it shall find that the public interest, convenience, or necessity will be served thereby may waive or modify the foregoing provisions of this section for the operation of any station except (1) stations for which licensed operators are required by international agreement, (2) stations for which licensed operators are required for safety purposes, (3) stations engaged in broadcasting, and (4) stations operated as common carriers on frequencies below thirty thousand kilocycles:"

Although the area not covered by the exceptions is narrow, appellants contend that in such area the Commission is permitted to exercise arbitrary

power because the Act contains no guide or standard whereby the exercise of discretion may be measured. The standard of "public interest, convenience or necessity," particularly when construed with the purposes and requirements of the Act, is adequate. Federal Radio Commission v. Nelson Bros. Co., 289 U. S. 266, 285. National Broadcasting Co., v. United States, 319 U. S. 190, 225.

Affirmed.

WILLIAM HEALY,
Circuit Judge.

JAMES ALGER FEE,
District Judge,

GUS J. SOLOMON,
District Judge.

[Endorsed]: Opinion. Filed June 27, 1951. Paul P. O'Brien, Clerk. (As amended by order of Sep. 14, 1951.)

United States Court of Appeals
for the Ninth Circuit

No. 12387

RALPH CASEY, GEORGE LaCLAIR and EDWARD PLESA,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

JUDGMENT

Appeal from the United States District Court for the Western District of Washington, Northern Division.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington, Northern Division, and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered June 27, 1951.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, September 14, 1951.

Before: Healy, Circuit Judge;
Fee and Solomon, District Judges.

[Title of Cause.]

ORDER DIRECTING AMENDMENT OF OPINION AND DENYING PETITION FOR REHEARING

Ordered that the opinion of this Court heretofore rendered be amended pursuant to the order this day filed.

Upon consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellants, filed July 25, 1951, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

United States Court of Appeals
for the Ninth Circuit

CERTIFICATE OF CLERK, U. S. COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I Paul P. O'Brien, as Clerk of the United States Court of Appeals for the Ninth Circuit, do hereby certify the foregoing 328 pages, numbered from and including 1 to and including 328, to be a full, true and correct copy of the entire record of the above-entitled case in the said Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 27th day of September, 1951.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 379

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed December 3, 1951

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

LIBRARY
SUPREME COURT, U. S.

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CHARLES ELMORE CROPLEY
CLERK

No. 379

In the Supreme Court of the United States

OCTOBER TERM, 1951

RALPH CASEY, GEORGE LaCLAIR and EDWARD PLESA,
Petitioners,

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

and

BRIEF IN SUPPORT THEREOF

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634 Central Building,
Seattle, Washington.
Counsel for Petitioners

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634 Central Building,
Seattle, Washington.
Of Counsel for Petitioners

THE ARGUS PRESS, SEATTLE

No. .....

In the Supreme Court of the United States

OCTOBER TERM, 1951

RALPH CASEY, GEORGE LaCLAIR and EDWARD PLESA,
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v.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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INDEX

	Page
PETITION FOR WRIT OF CERTIORARI	1
Statement of the Case and the Matters Involved	1
Jurisdictional Statement	6
1. Jurisdiction of the Court	6
2. The Decision and Judgment of the Court of Appeals	6
3. Basis upon which it is contended the Supreme Court has jurisdiction and cases in support thereof	7
The Questions Presented	9
Points Relied Upon for the Issuance of the Writ of Certiorari	10
BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI	13
Opinions Below	13
Jurisdiction	14
Statement of the Case	14
Specifications of Errors	14
Constitutional and other Provisions Involved	14
Argument	15
Summary of Argument	15
Point One	15
Point Two	20
Point Three	23
APPENDIX	27
Fourth Amendment to the United States Constitution	27
Fifth Amendment to the United States Constitution	27
Section 318, Title 47, U.S.C.A.	27
Section 301, Title 47, U.S.C.A.	28
Section 1254, Title 28, U.S.C.	29
Section 2101, Title 28, U.S.C.	30
Section 3041, Title 18, U.S.C.	30
Section 3052, Title 18, U.S.C.	31
Section 3053, Title 18, U.S.C.	31

Page

Section 781(b), Title 49, U.S.C. 32
Court Rules 33
Revised Rules of the Supreme Court,
Rule 36 (28 U.S.C.A.) 33
Rule 38 (28 U.S.C.A.) 34

TABLE OF CASES

Agnello v. United States, 269 U.S. 20, 70 L.ed. 149 (1925) 7, 11, 15, 20
Amos v. United States, 255 U.S. 313, 65 L.ed. 654 (1921) 19, 23
Byars v. United States, 273 U.S. 28, 71 L.ed. 520 (1927) 7, 15, 20
Carroll v. United States, 267 U.S. 132, 69 L.ed. 543 (1925) 15, 20, 21
Federal Radio Commission v. Nelson Bros. Co., 289 U.S. 266, 285, 77 L.ed. 1166 (1933) 24
Go-Bart Co. v. United States, 282 U.S. 344, 75 L.ed. 374 (1931) 7, 11, 15, 20, 22
Gouled v. United States, 225 U.S. 298, 65 L.ed. 647 (1921) 19, 23
Harris v. United States, 331 U.S. 145, 91 L. ed. 1399 (1947) 22
Lefkowitz v. United States, 285 U.S. 452, 76 L.ed. 877 (1932) 22
Lustig v. United States, 338 U.S. 74, 93 L.ed. 1819 (1946) 7, 11, 15, 20
National Broadcasting Company v. United States, 319 U.S. 190, 225, 87 L.ed. 1344 (1943) 24
Panama Refininig Co. v. Ryan, 293 U.S. 388, 79 L.ed. 446 (1935) 11, 15, 23
Schechter Corp. v. U.S., 295 U.S. 495, 79 L.ed. 1570 (1935) 11, 15, 23
United States v. DeRi, 332 U.S. 581, 92 L.ed. 210 (1941) 20, 21
United States v. Kirschenblatt, 16 F.(2d) 202, 51 A.L.R. 416 22
United States v. Rabinowitz, 339 U.S. 56, 94 L.ed. 653 (1950) 22

STATUTES

	Page
Sec. 3041, Title 18, U.S.C.	22, 30
Sec. 3052, Title 18, U.S.C.	22, 31
Sec. 3053, Title 18, U.S.C.	22, 31
Sec. 1254, Title 28, U.S.C.	6, 14, 29
Sec. 2101, Title 28, U.S.C.	6, 14, 30
Sec. 301, Title 47, U.S.C.	1, 6, 8, 10, 14, 15, 23, 24, 27
Sec. 318, Title 47, U.S.C.	2, 6, 8, 9, 10, 11, 14, 15, 23, 24, 27
Sec. 781, *et seq.*, Title 49, U.S.C.	20, 31
Sec. 1254, Title 28, U.S.C.A.	14
Sec. 2101, Title 28, U.S.C.A.	14

CONSTITUTION

United States Constitution:	
Fourth Amendment	7, 10, 27
Fifth Amendment	10, 27

RULES

Revised Rules of the Supreme Court, Rules 36 and 38 (28 U.S.C.A.)	6, 14
Federal Rules of Criminal Procedure, Rule 37(b) (18 U.S.C.A.)	6, 14

In the

Supreme Court of the United States

OCTOBER TERM, 1951

RALPH CASEY, GEORGE LACLAIR and EDWARD PLESA, *Petitioners*,

v.

UNITED STATES OF AMERICA, *Respondent*.

No. .....

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

The petition of Ralph Casey, George LaClair and Edward Plesa for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit respectfully shows:

STATEMENT OF THE CASE AND THE MATTERS INVOLVED

The petitioners were convicted in the District Court of the Western District of Washington, Northern Division, on six counts of an indictment, three of which charged them with operation of radio apparatus for the transmission of energy, communications and signals without first obtaining a station license, all in violation of Section 301, Title 47, United States Code, and three

of which charged them with operating radio apparatus for the transmission of energy, communications and signals without first obtaining a radio operator's license, the radio apparatus being set up as a radio station for which a radio station license is required, all in violation of Section 318, Title 47, U.S.C. (R. 2-6).

As the result of a complaint made by the Police Department of the city of Everett, Washington, to the Federal Communications Commission in Seattle, Washington, to the effect that an unlicensed radio transmitter had been used by unknown individuals to bilk race track "bookies" out of a large sum of money, the officer in charge of the Federal Communications Commission in Seattle commenced an investigation for the purpose of locating said transmitter. The investigation was commenced on or about January 25, 1949 (R. 90-91, 207-208) by Federal Communications Commission radio engineers, who are not law enforcement agents or officers. On February 2, 1949, a complaint was received that a broadcast had been made on a frequency of 3936 kilocycles (R. 52). No complaints other than this were received between that time and February 7, during which time the investigation had been proceeding by the Federal Communications Commission, excepting from two amateurs who heard an unidentifiable signal about 7:10 P.M. on February 7, 1949, in the State of Oregon (R. 40-41, 48-49). The signals heard on February 7 were on a frequency of approximately 3540 kilocycles. The Federal Communications Commission investigators were unable to locate any unauthorized signal on a frequency of 3936 kilocycles, but did hear a voice testing for modu-

lation on a frequency of 3540 kilocycles (R. 53). Because they heard no call letters, they concluded that they were listening to an unlicensed station.

On February 10, 1949, at about 12:26 P.M., the engineer-investigators again heard a signal which they concluded was emanating from the Benjamin Franklin Hotel, located on the corner of Fifth and Virginia Streets in Seattle, Washington (R. 66-67). Three of them entered the hotel, and, using a direction finder, determined that the signal was coming from room 1217. The investigators did not know at this time to whom the room had been registered, nor had they seen the persons registered in that room. The investigator in charge heard a voice saying, "Testing 1-2-3-4 for modulation." This was at 1:46 P.M. The Federal Communications Commission investigators returned to the lobby and checked the hotel records and discovered that the room was registered in the names of the petitioners (R. 71). The investigator in charge then left the hotel and went to the United States Court House to secure a warrant for the arrest of the appellants. He left at about 1:52 P.M. Two other investigators remained in the lobby of the hotel for a few minutes and then returned to their office. Upon arriving there, one of them received a telephone call from the hotel manager (R. 192, 212-213) who stated that petitioners were about to check out and that their car was located at the Motor Ramp Garage (R. 192-193, 212-213). Thereupon, one of the investigators telephoned the attendant at the garage, stating he was a federal officer and requesting the attendant to disable the car so that it could not be moved prior to the

arrest of the petitioners. This was sometime between 1:52 P.M. and 2:15 P.M. (R. 193, 224-225). The attendant complied with this request by disabling petitioners' car (R. 225-226). Immediately after this, these two engineer-investigators went to the Motor Ramp Garage, a garage not connected with the hotel but independently operated, located at Sixth and Westlake, Seattle, Washington, approximately eight blocks from the Federal Court House and two blocks from the Benjamin Franklin Hotel, arriving there at 2:15 P.M. (R. 140). When they first entered the garage, they talked to an attendant there, had the attendant point out the car of the petitioners (a 1948 Packard convertible coupe) (R. 141-142), asked the attendant to unlock the car, which was done, and they then searched the automobile and the baggage, and then returned the baggage to the car (R. 227-228). One of them then had a telephone conversation with the engineer in charge of the Federal Communications Commission as the result of which he went out to obtain the services of a policeman to prevent the petitioners from moving the car in the event they attempted so to do until a warrant for their arrest could be served (R. 143). A warrant for the arrest was subsequently issued and was served by Marshal Scully upon the petitioners in room 1217 of the Benjamin Franklin Hotel at 3:20 P.M. The Marshal searched the room but discovered nothing (R. 72-74). Following the arrest, the Federal Communications Commission investigators, who were neither law enforcement officers nor agents, again returned to the Motor Ramp Garage and removed the articles theretofore discovered from the automobile,

which articles consisted of radio transmitting equipment and a receiver.

Between 1:47 P.M., when the Federal Communications Commission investigator went to the Court House to get a warrant for arrest, and 3:20 P.M., when the arrest was made, a search had been made of the petitioners' automobile in a garage several blocks from the place where the arrest was made subsequently, said search being made without warrant, although a magistrate was then available and no apparent necessity for a search without a warrant existed (R. 19-21, 108, 155), and said search and subsequent seizure of petitioners' property was made by persons who were not law enforcement officers and who, under any circumstances, had no right to make a search and seizure with or without warrant.

Motion to suppress the evidence thus obtained was made prior to trial (R. 12-14). Two of the Federal Communications Commission investigators filed counter-affidavits in resistance to the motion. In both of the affidavits the investigators described themselves as engineers; in neither was there any intimation that the investigators were law enforcement agents or otherwise had the right or authority to search and seize the property of petitioners (R. 14, 17-21).

Thereafter, petitioners objected to the introduction of the articles seized (R. 76-77) and renewed their objection at the conclusion of the Government's case (R. 231-236). These objections were overruled by the trial court. After the jury returned a verdict against petitioners, petitioners moved for a new trial on the ground,

inter alia, that the trial court erred in failing to suppress the evidence thus obtained.

On the appeal to the Court of Appeals, that court held that petitioners were not entitled to claim the constitutional protection from unreasonable searches and seizures on the ground that they did not claim ownership or interest in the radio equipment seized.

In the appellate court, petitioners further claimed that Sections 301 and 318, Title 47, U.S.C., were unconstitutional because of an improper delegation of legislative power to the Federal Communications Commission because the statute delegated to the Commission arbitrary discretion to waive or modify certain provisions therein and determine whom shall be prosecuted for violation thereof, and said statute set up no standard by which this discretion could be measured. The Court of Appeals rejected this contention and held that the statute set up a standard of public convenience and necessity which was sufficient and adequate.

JURISDICTIONAL STATEMENT

1. Jurisdiction of the Court

The jurisdiction of this court is invoked under Section 240a of Judicial Code as amended, Title 28 U.S.C. Sections 1254, 2101 (28 U.S.C.A. Sections 1254, 2101). See also Rules 36 and 38, Revised Rules of the Supreme Court, 28 U.S.C.A.; Rule 37b, Federal Rules of Criminal Procedure, 18 U.S.C.A.

2. The Decision and Judgment of the Court of Appeals.

The decision and Judgment of the Court of Appeals was rendered on June 27, 1951 (as amended by order of

September 14, 1951) (R. 328). This petition, with supporting brief, and the certified record are filed within thirty days next after denial of Petition for Rehearing.

3. Basis Upon Which It Is Contended the Supreme Court Has Jurisdiction and Cases in Support Thereof.

The basis upon which it is contended that the Supreme Court has jurisdiction herein and the cases believed to support such jurisdiction are as follows:

a. The opinion of the Court of Appeals upholds a conviction of the petitioners upon a record which shows a search and seizure of petitioners' personal property and effects was made without warrant, one hour prior to the arrest, by a Federal investigator who never made the arrest and in the absence of the petitioners who were subsequently arrested, said search and seizure being in violation of petitioners' rights under the Fourth Amendment to the Constitution of the United States. *Go-Bart Co. v. United States,* 282 U.S. 344; *Lustig v. United States,* 338 U.S. 74.

b. The opinion of the Court of Appeals upholds the conviction of petitioners upon a record which shows that evidence unlawfully seized in violation of petitioners' constitutional rights was admitted over their objections. *Angello v. United States,* 269 U.S. 20; *Byars v. United States,* 273 U.S. 28.

c. The opinion of the Court of Appeals upholds the conviction of petitioners upon a statute which is unconstitutional insofar as it delegates authority to the Federal Communications Commission to exercise discretion in the determination to waive or modify pro-

visions of said section and to arbitrarily determine whom shall be prosecuted for violation thereof, said statute being Sections 301 and 318 of Title 47, U.S.C. pp. 4072 and 4076 to 4077, which reads as follows:

"Section 301, Title 47, U.S.C.A.—License for radio communication or transmission of energy:

"It is the purpose of this chapter, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission * * *. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the District of Columbia to another place in the same Territory, possession, or District; or (b) from any State, Territory or possession of the United States, or from the District of Columbia to any other State, Territory or possession of the United States, or (c) from any place in any State, Territory or possession of the United States to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this chapter and

with a license in that behalf granted under the provisions of this chapter."

Section 318, Title 47, U.S.C.A.:

"The actual operation of all transmitting apparatus in any radio station for which a station license is required by this Chapter shall be carried on only by a person holding an operator's license issued hereunder, and no person shall operate any such apparatus in such station except under and in accordance with an operator's license issued to him by the Commission: Provided, however, That the Commission, if it shall find that the public interest, convenience or necessity will be served thereby may waive or modify the foregoing provisions of this section for the operation of any station except (1) stations for which licensed operators are required by international agreement, (2) stations for which licensed operators are required for safety purposes, (3) stations engaged in broadcasting, and (4) stations operated as common carriers on frequencies below thirty thousand kilocycles: Provided further, That the Commission shall have power to make special regulations governing the granting of licenses for the use of automatic radio devices and for the operation of such devices."

THE QUESTIONS PRESENTED

The questions presented and raised by this petition are as follows:

1. Whether the Court of Appeals erred in holding that petitioners were not entitled to claim their constitutional protection from unreasonable search and seizure for failing to claim ownership or an interest in the articles seized.

2. Whether Federal administrative officers have the right, without warrant, to search and seize personal property of the petitioners in petitioners' automobile, such search and seizure being made in the absence of petitioners and not incidental to a lawful arrest.

3. Whether the trial court upon petitioners' motion to suppress evidence unlawfully seized from petitioners in violation of their rights under the Fourth and Fifth Amendments to the Constitution, which motion was heard prior to trial upon affidavits and oral arguments, and upon petitioners' objection to admission of said evidence during trial, should not have ordered the evidence articles seized suppressed for use as evidence and have sustained petitioners' objection to their admission in evidence.

4. Whether the Court of Appeals shall not have held Sections 301 and 318 of Title 47, U.S.C., unconstitutional for the reason that this statute delegated arbitrary powers to the Federal Communications Commission to waive or modify the provisions of said sections to determine whom shall be prosecuted for violation thereof, there being no proper standard set up therein to guide a proper use of discretion.

POINTS RELIED UPON FOR THE ISSUANCE OF THE WRIT OF CERTIORARI

1. The opinion of the Court of Appeals holding that petitioners did not claim ownership or an interest in the articles seized is contrary to the sole and only evidence on this point.

2. The opinion of the Court of Appeals upholding

the search and seizure is in direct conflict with applicable decisions of this court such as *Agnello v. United States*, 269 U.S. 20; *Go-Bart Importing Co. v. United States*, 282 U.S. 344; *Eustig v. United States*, 338 U. S. 74.

3. The opinion of the Court of Appeals holding that an adequate standard was set up in Section 318, Title 47, U.S.C., is contrary to the decisions of this court in *Panama Refining Co. v. Ryan*, 293 U.S. 388, and *Schechter Corp. v. United States*, 295 U.S. 495.

Wherefore, and for the reasons herein stated, petitioners respectfully pray that this Honorable Court issue a writ of certiorari to the United States Court of Appeals for the Ninth Circuit to the end that the questions involved may be fully presented and argued and justice done in the premises.

Dated, Seattle, Washington,
October 5, 1951.

RALPH CASEY,
GEORGE LACLAIR,
EDWARD PLESA,
Petitioners.

F. M. REISCHLING,
634 Central Building,
Seattle, Washington.
Counsel for Petitioners

WARREN CHAN
634 Central Building,
Seattle, Washington.
Of Counsel for Petitioners

No.....

In the
Supreme Court of the United States

OCTOBER TERM, 1951

RALPH CASEY, GEORGE LACLAIR and EDWARD PLESA,
Petitioners,

v.

UNITED STATES OF AMERICA, *Respondent.*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The judgment of the trial court was rendered on the 12th day of September, 1949 (R. 24).

The opinion and judgment of the Court of Appeals was rendered and filed on June 27, 1951 (as amended by order of September 14, 1951) (R. 326, 327). The opinion of the Court of Appeals will be found on page 318 of the Record.

The petition for rehearing was denied by the Court of Appeals on September 14, 1951 (R. 328).

JURISDICTION

The date of the judgment to be reviewed is June 27, 1951 (R. 327), and the date of the Denial of the Petition for Rehearing is September 14, 1951 (R. 328).

The jurisdiction of this court is invoked under Section 240a of Judicial Code as amended, Title 28 U.S.C.,

Secs. 1254, 2101 (28 U.S.C.A. Secs. 1254, 2101). See also Rules 36 and 38, Revised Rules of the Supreme Court (28 U.S.C.A.); Rule 37b, Federal Rules of Criminal Procedure, 18 U.S.C.A.

STATEMENT OF THE CASE

A full statement of the case has been heretofore given in the Petition for Certiorari, and for the sake of brevity the statement is not repeated here.

SPECIFICATION OF ERRORS

1. The Court of Appeals erred in holding that petitioners were not entitled to invoke the constitutional protection against unreasonable searches and seizures for failing to claim ownership or an interest in the articles seized.

2. The Court of Appeals erred in not holding that the search and seizure was unlawful and unreasonable.

3. The Court of Appeals erred in holding that Secs. 301 and 318 of Title 47, U.S.C., set up a sufficient and adequate standard to measure administrative discretion and was, therefore, constitutional.

CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED

Constitutional and other provisions involved are set forth in appendix pages 27 to 35, *infra*.

ARGUMENT

Summary of Argument

1. Contrary to the sole and only evidence in the record as to petitioners' ownership of the seized articles, the Court of Appeals held that petitioners did not claim ownership of the seized articles and, hence, were not entitled to invoke the constitutional guarantee against unreasonable searches and seizure.

2. In failing to hold that the search and seizure was unlawful and unreasonable, the decision of the Court of Appeals was contrary to prior decisions of this court. *Agnello v. United States,* 269 U.S. 20; *Byars v. United States,* 273 U.S. 28; *Go-Bart Co. v. United States,* 282 U.S. 344; *Lustig v. United States,* 338 U.S. 74.

3. The decision of the Court of Appeals in holding Secs. 301 and 318 of Title 47, U.S.C. constitutional is in conflict with prior decisions of this court. *Panama Refining Co. v. Ryan,* 293 U.S. 388; *Schecter Corp. v. United States,* 295 U.S. 495.

Point One

Throughout the entire trial of the case, the United States Attorney tacitly conceded petitioners' ownership of the radio equipment and urged only, as the basis for denial of the motion to suppress, that the facts in the case were governed by the decision in *Carroll v. United States,* 267 U.S. 132. The trial court specifically denied petitioners' motion on the basis of the *Carroll* case (R. 235). On the appeal, the Court of Appeals apparently agreed with counsel for petitioners that the *Carroll* case was not controlling, but the appellate court

then proceeded to deny petitioners the right to claim the protection of the Constitution against unreasonable search and seizure on the ground that petitioners did not claim ownership of or an interest in the articles seized (R. 323). This is contrary to the theory upon which the case was tried and contrary to the sole and only evidence on this point in the case.

The evidence clearly showed ownership in the petitioners. The testimony was that petitioner George LaClair *bought the equipment for* $50.00. His testimony is as follows:

> "Q. With reference to Plaintiff's Exhibits 5 and 6, the radio transmitter and equipment, when did you first see the items contained in those two exhibits?
>
> A. Well, the items contained in the exhibit I seen the early part of that week. We got there Sunday night, I would say it was either Monday or Tuesday. I didn't see the case, the suitcase I didn't see. I seen the contents of it, but not the suitcase.
>
> Q. Where was it that you saw it?
>
> A. In Olympia, Washington.
>
> Q. Who was present?
>
> A. There was Casey, Plesa, there was two other gentlemen present and myself.
>
> Q. Name who the other gentlemen were.
>
> A. One fellow's name was Johnny Wilcie, and the other gentleman, I don't know his name. I know him by sight but I don't know his name.
>
> Q. Where was it?

A. In a restaurant in Olympia.

Q. Where was this equipment?

A. Johnny Wilcie had it.

Q. Did you have a conversation, all of you together, about this equipment?

A. Yes, sir." (R. 250.) * * *

"Q. Then what occurred? Just tell what happened.

A. Well, we didn't do any business with him, we didn't know if we had any use for it, so finally he got to the point where he would take $50. He said the equipment was worth a couple of hundred dollars, *so I bought it for* $50." (R. 252)

"Q. Were you at any time hiding this machine from anybody?

A. No, sir.

Q. Never tried to hide it?

A. No, sir.

Q. Where was the machine going when it was in your car out there in the Motor Ramp Garage?

A. We decided to bring it to a radio man to try to get it so it would work." (R. 256.) * * *

"Q. *You say after the purchase of this that you yourself paid for it but that everybody chipped in, is that correct?*

A. *Yes, sir.*" (R. 258.) * * *

"Q. When John Wilcie sold you that transmitter, did he sell you that 3536 crystal there?

A. Whatever *he sold me is there,* outside of maybe a battery, a battery or the big bag, we bought the big bag." (R. 261) * * *

To the same effect is testimony of petitioner Edward Plesa:

"Q. This Exhibit 5 and 6 which is the transmitter, when did you first see that?

A. I seen it a few days after they came in.

Q. And where did you first see it?

A. Down at Ben Moore's poolroom, I think it was." (R. 267) * * *

"Q. Tell the court and jury what occurred.

A. We went in and was going to start playing pool or something, fooling around in the poolroom there, and he come in and told us he was broke and wanted to leave, wanted to know if he could sell us something, borrow some money at first, and we couldn't give him none, we didn't know him well enough. So he had something he said he would sell us, so we asked him what it was, and he had a couple of boxes in this poolroom right there, and he showed it to us, and told us it was worth more than he wanted for it, *and so we wind up buying it.* He told us we could use it for a shooting range or something like that. He says that is what it has been used for.

Q. *Is that where you got this transmitter then?*

A. *Yes, sir.*

Q. Then you came on up to Seattle with LaClair and Casey, is that right?

A. Yes, sir." (R. 268.) * * *

This is corroborated by testimony of petitioner Ralph Casey:

"Q. Exhibits 5 and 6, you are familiar with the exhibits, aren't you? You know what those are?

A. Yes.

Q. When did you first see those?

A. I seen them down in this poolroom down there. That is the first I ever seen them.

Q. *Did you and George LeClair obtain them at that poolroom?*

A. *Yes.*

Q. *From whom did you obtain them?*

A. *John Wilcie.*" (R. 274.) * * *

"Q. *After you obtained this equipment, which is Plaintiff's Exhibits 5 and 6, did you go out and purchase a bag to carry it in?*

A. *Yes, we did.*

Q. Who was with you on that occasion?

A. *George LaClair and Eddie Plesa.*" (R. 275) * * * (Emphasis supplied.)

Even though the fact of ownership was not clearly brought out in petitioners' affidavit before trial in support of the motion to suppress, after the evidence in the trial clearly showed that petitioners owned the property, the trial court should have granted petitioners' motion to strike the evidence or granted their motion for a new trial because of the failure to suppress the evidence thus unlawfully obtained. *Gouled v. United States,* 225 U.S. 298; *Amos v. United States,* 225 U.S. 313.

Since the Court of Appeals went to such lengths to depart from the theory of the Government's case and held that petitioners were not entitled to constitutional immunity, it would appear that that court was more interested in sustaining the conviction than in deciding the merits of petitioners' case.

Point Two

It is elementary that only unreasonable searches and seizures are prohibited by the Fourth Amendment to the Constitution. *Carroll v. United States,* 267 U.S. 132. If legally obtained, the radio equipment seized was competent evidence in establishing the corpus delicti and identifying the petitioners as parties sought in an investigation of unauthorized radio transmissions. Without this evidence, petitioners would have been entitled to a directed verdict at the close of presentation of evidence.

A search without warrant is not defendable as incidental to a lawful arrest where the search is made by Federal investigators who did not make the arrest and where the search was made in the absence of the persons who were subsequently arrested. *Lustig v. United States,* 338 U.S. 74. Protection under the Fourth Amendment to the Constitution extends to all equally, to those justly suspected as accused as well as to the innocent. *Agnello v. United States,* 269 U.S. 20; *Go-Bart Co. v. United States,* 282 U.S. 344. Any search prosecuted in violation of the Constitution cannot be made lawful by what it brings to light. *Byars v. United States,* 273 U.S. 28; *United States v. DeRi,* 332 U.S. 581.

In the case now before this court, the search and seizure of the property from the automobile involved did not concern contraband articles expressly declared to be subject to seizure and forfeiture by express act of Congress and is, therefore, not within the rule of *Carroll v. United States,* 267 U.S. 132. See also Section 781, et seq., Title 49, U.S.C. (Liquor). As the Supreme

Court said in *United States v. DeRi*, 332 U.S. 581, 584, 585, "Obviously, the court should be reluctant to decide that a search thus authorized by Congress was unreasonable and that the Act was therefor unconstitutional. In view of the strong presumption of Constitutionality due to an act of Congress, especially when it turns on what is 'reasonable,' the *Carroll* decision falls short of establishing a doctrine that, *without such legislation,** automobiles nonetheless are subject to search without a warrant in enforcement of all Federal Statutes. *This court has never yet said so.*"*

The record here discloses that at least one hour prior to the arrest of petitioners, one of the Federal Communications Commission investigators had ordered the disabling of petitioners' car (R. 72-74, 224-226) (which act in itself constituted an arrest without warrant), and he and one other Federal investigator searched petitioners' car and baggage without first obtaining a warrant and discovered the radio equipment. The fact that the investigators at that time returned the articles to the automobile and did not permanently confiscate the articles until after the arrest had been made would not make a subsequent seizure lawful. If the first search, being illegal, reveals the items which are later seized, the fact that the actual confiscation was made with a warrant does not wipe the taint of illegality from the entire search and seizure.

However, the record here shows that *at no time during the entire search and seizure did the investigators procure a search warrant.* That the search and seizure

*Emphasis supplied.

was not incidental to a lawful arrest is amply born out by the record. None of the Federal investigators were in the position of being the arresting officer, as the arrest was made by a Federal Marshal (R. 178-181). In addition, the Federal Communications Commission investigators were not in the class of Federal officers entitled to make arrests, either with or without warrant. Sections 3041, 3052 and 3053 of Title 18, U.S.C. The automobile was located in a garage two city blocks from the place of the arrest, neither the vehicle nor the garage being within an area under the control of petitioners. See *Harris v. United States*, 331 U.S. 145; *United States v. Rabinowitz*, 339 U.S. 56. The search was begun a full hour or more prior to the arrest. It is evident that the search was made solely for the purpose of seizing whatever might be turned up on examination of the baggage in the hope that it might be of evidentiary value in connecting the petitioners with a federal crime under investigation. Such practice has been universally condemned. See *Go-Bart Co. v. United States*, 282 U.S. 344; *Lefkowitz v. United States*, 285 U.S. 452; *United States v. Kirschenblatt*, 16 F.(2d) 202.

When it becomes apparent during the trial that there has been an unconstitutional seizure of the property of the accused, the court should exclude the property and any testimony relating thereto given by the government agents who made the unlawful seizure on motion of the accused made after both testimony and property have been introduced in evidence against him, and this has been held to be the rule even though the trial court prior to trial had denied the motion to suppress.

Amos v. United States, 255 U.S. 313; *Agnello v. United States*, 269 U.S. 20; *Gouled v. United States*, 225 U.S. 298.

In the present case, if the evidence of what the officers found were stricken from the record, there is little left but suspicion that a crime had been committed. There is no corpus delicti, and no case against petitioners. Therefore, judgment against petitioners should be reversed and petitioners discharged and left to go hence free and unfettered.

Point Three

Under prior decisions of this court, it has been established that legislative power is unconstitutionally delegated to administrative or executive officers when the legislation embodies no standard, or no definition of the circumstances and conditions under which the administrative or executive agency is to act. *Panama Refining Co. v. Ryan*, 293 U.S. 388; *Schechter Poultry Corp. v. United States*, 295 U.S. 495. In the *Panama Refining Co.* case, a standard measured in terms of the public good was held to be insufficient. In the instant case, the Court of Appeals held that a standard measured by "public interest, convenience or necessity" was sufficiently adequate (R. 326) to guide the Federal Communications Commission in determining when the provisions of Sections 301, 318 Title 47, U.S.C., should be modified to determine whom should or should not be prosecuted for violation thereof. It is submitted that "public interest, convenience or necessity" is no more susceptible of definition than "public good" and

that the above cited sections of Title 47 U.S.C. are unconstitutional.

In support of its position upholding the constitutionality of Section 318 of the Federal Communications Commission Act, challenged on the ground that it contains an unlawful delegation of legislative authority to the Commission because no standard or guide is set up whereby the exercise of discretion may be measured, the court held that the phrase "public interest, convenience or necessity" is a sufficient standard, and cites two cases as supporting this conclusion. The first case is *Federal Radio Commission v. Nelson Bros. Co.*, 289 U.S. 266, 285. This case had only to do with the exercise of a discretion in the granting or withholding of licenses applied for by radio companies. The second case, that of *National Broadcasting Co. v. United States*, 319 U.S. 190, 225, in effect held that legislative power is not unconstitutionally delegated by the Federal Communications Act of 1934 in empowering the Federal Communications Commission to adopt such regulations applicable to radio stations engaged in chain broadcasting, and further holding that the Federal Communications Commission did not exceed its allowable discretion in adopting regulations providing that a broadcasting license shall not be granted to a radio broadcasting station having certain contracts, agreements, etc., with a network organization which precludes it from broadcasting the programs of other network organizations. These regulations are, of course, always

subject to review by the proper constituted tribunals as provided by the Act. We do not see the similarity of the cases cited to a case where a Federal Communications Commission agent, by his own testimony, determines that if, in his opinion, an individual has violated the law he is guilty of a willful violation thereof notwithstanding the fact that in another section of the country, an equally capable and intelligent man, acting on the same facts but governed by his own personal philosophy, can determine that the man has committed no violation of the law. In other words, without a standard or guide, there can be no uniformity in the enforcement of the provisions of this Act. If the Legislature or the Congress declares the doing or omitting to do of any act to be a crime, it must set up standards by which the average individual can gauge and determine the nature of the violation. We respectfully submit that there is no such standard here. The testimony of Mr. Arlowe on this point emphasizes the interpretation given to the section by this particular office:

"A. We determine what kind of operation they are doing; first, whether they have ever had a license, what type of operation they are carrying on. If it looks like they are making a broadcast with an unlicensed transmitter and that they are old enough to realize what they are doing, and if they are using the radio for more than just to test or in preparation for getting a license.

Q. Then you go and talk to them, don't you, and find out what they are doing?

A. No, we don't. We judge from what they say on the air, what they do with it." (R. 283) * * *

It is respectfully submitted that the judgment of conviction should be reversed.

Respectfully submitted,

F. M. REISCHLING,
Counsel for Petitioners.

WARREN CHAN,
Of Counsel for Petitioners.

APPENDIX

Fourth Amendment to the Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment to the Constitution:

No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

Section 318, Title 47, U.S.C.A.:

The actual operation of all transmitting apparatus in any radio station for which a station license is required by this Chapter shall be carried on only by a person holding an operator's license issued hereunder, and no person shall operate any such apparatus in such station except under and in accordance with an operator's license issued to him by the Commission: Provided, however, That the Commission, if it shall find

that the public interest, convenience, or necessity will be served thereby may waive or modify the foregoing provisions of this section for the operation of any station except (1) stations for which licensed operators are required by international agreement, (2) stations for which licensed operators are required for safety purposes, (3) stations engaged in broadcasting, and (4) stations operated as common carriers on frequencies below thirty thousand kilocycles: Provided further, That the Commission shall have power to make special regulations governing the granting of licenses for the use of automatic radio devices and for the operation of such devices.

Section 301, Title 47, U.S.C.A.—License for radio communication or transmission of energy.

It is the purpose of this chapter, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission * * *. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the District of Columbia to another place in the same Territory, possession, or District; or (b) from any State, Territory or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the U.S., or (c) from any place in any State, Territory, or possession of the United States to any place in any foreign country or to any vessel; or (d) within any State when the effect of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission

of such energy, communications, or signals from within said State to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter.

STATUTES

Section 1254, Title 28, U.S.C.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

Section 2101, Title 28, U.S.C.

* * * (f) If any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period alloted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

Section 3041, Title 18, U.S.C.

For any offense against the United States, the offender may, by any justice or judge of the United States, or by any United States commissioner, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any state where the offender may be found, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the office of the clerk of such

court, together with the recognizances of the witnesses for their appearances to testify in the case.

A United States judge or commissioner shall proceed under this section according to rules promulgated by the Supreme Court of the United States. Any state judge or magistrate acting hereunder may proceed according to the usual mode of procedure of his state but his acts and orders shall have no effect beyond determining to hold the prisoner for trial or to discharge him from arrest.

Section 3052, Title 18, U.S.C.

The Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation of the Department of Justice may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for felonies cognizable under the laws of the United States, where the person making the arrest has reasonable grounds to believe that the person arrested is guilty of such felony and there is a likelihood of his escaping before a warrant can be obtained for his arrest.

Section 3053, Title 18, U.S.C.

United States marshals and their deputies may carry firearms and may make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

Section 781 (b) Title 49, U.S.C.

As used in this section, the term "contraband article" means—

(1) any narcotic drug which has been or is possessed with intent to sell or offer for sale in violation of any laws or regulations of the United States dealing therewith, or which is sold or offered for sale in violation thereof, or which does not bear appropriate tax-paid internal-revenue stamps as required by law or regulations;

(2) Any firearm, with respect to which there has been committed any violation of any provision of the National Firearm Act, as now or hereafter amended, or any regulation issued pursuant thereto; or

(3) Any falsely made, forged, altered, or counterfeit coin or obligation or other security of the United States or of any foreign government; or any material or apparatus, or paraphernalia fitted or intended to be used, or which shall have been used, in the making of any such falsely made, forged, altered, or counterfeit coin or obligation or other security.

COURT RULES

Revised Rules of the Supreme Court, Rule 36 (28 U.S.C.A.):

1. An appeal will be out of time unless, within the period fixed by statute, application for allowance is presented to the judge or justice who allows it. A prior timely application to another judge or justice does not extend the statutory period. See *Matton Steamboat Co., Inc. v. Murphy,* 318 U.S. 412, 63 S.Ct. 1126, 87 L.ed. 1483. In cases where an appeal may be had from a district court to this court the same may be allowed, in term time or in vacation, by any judge of the district court, including a circuit judge assigned thereto, or by a justice of this court. In cases where an appeal may be had from a circuit court of appeals to this court the same may be allowed, in term time or in vacation by any judge of the circuit court of appeals or by a justice of this court. In cases where an appeal may be had from a state court of last resort to this court the same may be allowed in term time or in vacation by the chief justice or presiding judge of the state court or by a justice of this court. The judge or justice allowing the appeal shall take the proper security for costs and sign the requisite citation and he may also, on taking the requisite security therefor, grant a supersedeas and stay of execution or of other proceedings under the judgment or decree, pending such appeal. See Rev. Stat., Secs. 1000 and 1007, paragraph 1 of Rule 10, paragraph 2 of Rule 46, and Rule 62(c) of the Rules of Civil Procedure. For stay pending application for review on writ of certiorari see Rule 38, Paragraph 6.

Revised Rules of the Supreme Court, Rule 38 (28 U.S.C.A.):

5. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

* * * (b) Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way probably in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

FEDERAL RULES OF CRIMINAL PROCEDURE, RULE 37(b) (18 U.S.C.A.):

(b) Petition for Review on Writ of Certiorari.

(1) Petition to the Supreme Court for writ of certiorari shall be made as prescribed in its rules.

(2) Time of Making Petition. Petition for writ of certiorari may be made within 30 days after entry of the judgment or within such further time not exceeding 30 days as the Court or a justice thereof for cause shown may fix within the 30-day period following judgment. If the judgment was entered in a district court in Alaska, Hawaii, Puerto Rico, Canal Zone or Virgin Islands, the petition shall be deemed in time if mailed under a postmark dated within such 30-day period. As amended Dec. 27, 1948, eff. Jan. 1, 1949.

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Supreme Court of the United States

JANUARY TERM, 1952

RALPH CASEY, GEORGE LACLAIR and EDWARD PLESA,
Petitioners,

v.

UNITED STATES OF AMERICA, *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF PETITIONERS

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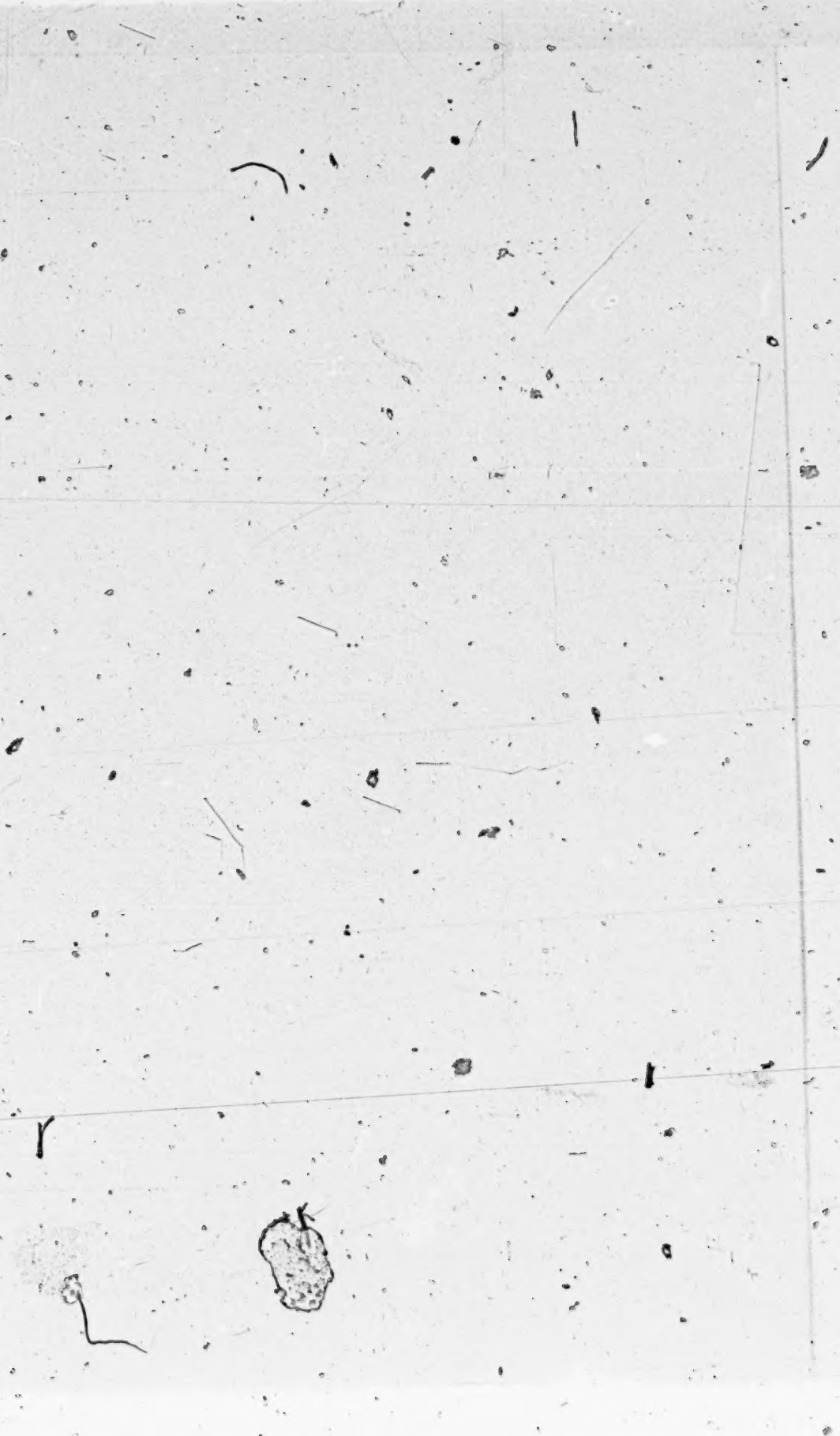

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INDEX

	Page
Opinions	1
Jurisdiction	1
Statement of the Case and the Matters Involved	2
Constitutional and Other Provisions Involved	8
Specification of Errors	7
Argument	8
Summary of Argument	8
Point One	9
Point Two	12
Point Three	19
Point Four	23
Point Five	26
Appendix	31
Fourth Amendment to the United States Constitution	31
Fifth Amendment to the United State Constitution	31
Statutes	31
Sec. 301, Title 47, U.S.C.	31
Sec. 318, Title 47, U.S.C.	32
Sec. 781(b), Title 49, U.S.C.	33
Sec. 1254(1), Title 28, U.S.C.	34
Sec. 2106, Title 28, U.S.C.	34
Sec. 3041, Title 18, U.S.C.	31
Sec. 3052, Title 18, U.S.C.	35
Sec. 3053, Title 18, U.S.C.	35
Court Rules	
Revised Rules of the Supreme Court, Rule 38 (5b) (28 U.S.C.A.)	36

TABLE OF CASES

Page

Agnello v. United States, 269 U.S. 20, 70 L.ed. 149 (1925) 8, 19
Amos v. United States, 255 U.S. 313, 65 L.ed. 654 (1921) 18, 22, 25, 26
Boyd v. United States, 116 U.S. 616, 29 U.S.C.R. 746 (1886) 11
Brinegar v. United States, 338 U.S. 160, 93 L.ed. 1879 (1949) 9
Byars v. United States, 273 U.S. 28, 71 L.ed. 520 (1927) 8, 20
Carroll v. United States, 267 U.S. 132, 69 L.ed. 543 (1925) 8, 9, 10, 11, 13, 19
Cogen v. United States, 278 U.S. 221, 73 L.ed. 275 (1929) 24, 25
Federal Radio Commisson v. Nelson Bros. Co., 289 U.S. 266, 77 L.ed. 1166 (1933) 27
Ganci v. United States, 287 Fed. 60, cert. denied 262 U.S. 755 25
Go-Bart Co. v. United States, 282 U.S. 344, 75 L.ed. 374 (1931) 8, 19, 21
Gouled v. United States, 225 U.S. 298, 65 L.ed. 647 (1921) 11, 18, 22, 25, 26
Harris v. United States, 331 U.S. 145, 91 L.ed. 1399 (1947) 21
Husty v. United States, 282 U.S. 694, 75 L.ed. 629 (1931) 9
Johnson v. United States, 333 U.S. 13, 92 L.ed. 44 ..... 8, 21
Lefkowitz v. United States, 285 U.S. 452, 76 L.ed. 877 (1932) 21
Lustig v. United States, 338 U.S. 74, 93 L.ed. 1819 (1946) 8, 19
National Broadcasting Co. v. United States, 319 U.S. 190, 87 L.ed. 1344 (1943) 27
Panama Refining Co. v. Ryan, 293 U.S. 388, 79 L.ed. 446 (1935) 9, 26
Scher v. United States, 305 U.S. 251, 83 L.ed. 151 (1938) 9

Page

Schecter Corp. v. United States, 295 U.S. 495, 79 L.ed. 1570 (1935) 9, 26
United States v. Asiendo, 171 F.2d 122 (1948) 11
United States v. DeRi, 332 U.S. 581, 92 L.ed. 210 (1941) 9, 11, 12, 20
United States v. Jeffers, No. 3 October Term, 1951 (72 S.Ct. 93) 8, 12, 18, 19, 20
United States v. Kirschenblatt, 16 F.2d 202, 51 A.L.R. 416 21
United States v. Rabinowitz, 339 U.S. 56, 94 L.ed. 653 (1950) 21

STATUTES

Sec. 301, Title 47, U.S.C. 2, 6, 7, 9, 27
Sec. 318, Title 47, U.S.C. 2, 6, 7, 9, 27
Sec. 781 (b), Title 49, U.S.C. 9, 33
Sec. 1254(1), Title 28, U.S.C. 3, 34
Sec. 2106, Title 28, U.S.C. 2, 34
Sec. 3041, Title 18, U.S.C. 21, 31
Sec. 3052, Title 18, U.S.C. 21, 35
Sec. 3053, Title 18, U.S.C. 21, 35

CONSTITUTION

United States Constitution:
Fourth Amendment 19, 20, 31
Fifth Amendment 11, 31

COURT RULES

Revised Rules of the Supreme Court, Rule 38 (5b) (28 U.S.C.A.) 3, 36

Supreme Court of the United States

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v.

UNITED STATES OF AMERICA, *Respondent*.

No. 379

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF PETITIONERS

OPINIONS BELOW

The judgment of the trial court was rendered on the 12th day of Septemer, 1949 (R. 24).

The opinion and judgment of the Court of Appeals was rendered and filed on June 27, 1951 (as amended by order of September 14, 1951 (R. 326, 327). The opinion of the Court of Appeals is reported at 191 F.(2d) 1.

The petition for rehearing was denied by the Court of Appeals on September 14, 1951 (R. 328).

JURISDICTION

The date of the judgment to be reviewed is June 27, 1951 (R. 327), and the date of the Denial of the Petition for Rehearing is September 14, 1951 (R. 328). The Petition for a Writ of Certiorari was filed on October

10, 1951, and the Order granting the Writ was entered December 3, 1951.

The jurisdiction of this court is invoked under Section 240a of Judicial Code as amended, Title 28 U.S.C., Secs. 1254(1) and 2106 (28 U.S.C.A. Secs. 1254(1) and 2106). See also Rule 38(5b), Revised Rules of the Supreme Court (28 U.S.C.A.).

STATEMENT OF THE CASE AND THE MATTERS INVOLVED

The petitioners were convicted in the District Court of the Western District of Washington, Northern Division, on six counts of an indictment, three of which charged them with operation of radio apparatus for the transmission of energy, communications and signals without first obtaining a station license, all in violation of Section 301, Title 47, United States Code, and three of which charged them with operating radio apparatus for the transmission of energy, communications and signals without first obtaining a radio operator's license, the radio apparatus being set up as a radio station for which a radio station license is required, all in violation of Section 318, Title 47, U.S.C. (R. 2-6).

As the result of a complaint made by the Police Department of the City of Everett, Washington, to the Federal Communications Commission in Seattle, Washington, to the effect that an unlicensed radio transmitter had been used by unknown individuals to bilk race track "bookies" out of a large sum of money, the officer in charge of the Federal Communications

Commission in Seattle commenced an investigation for the purpose of locating said transmitter. The investigation was commenced on or about January 25, 1949 (R. 90-91, 207-208) by Federal Communications Commission radio engineers, who are not law enforcement agents or officers. On February 2, 1949, a complaint was received that a broadcast had been made on a frequency of 3936 kilocycles (R. 52). No complaints other than this were received between that time and February 7, during which time the investigation had been proceeding by the Federal Communications Commission, excepting from two amateurs who heard an unidentifiable signal about 7:10 P.M. on February 7, 1949, in the State of Oregon (R. 40-41, 48-49). The signals heard on February 7 were on a frequency of approximately 3540 kilocycles. The Federal Communications Commission investigators were unable to locate any unauthorized signal on a frequency of 3936 kilocycles, but did hear a voice testing for modulation on a frequency of 3540 kilocycles (R. 53). Because they heard no call letters, they concluded that they were listening to an unlicensed station.

On February 10, 1949, at about 12:26 P.M., the engineer-investigators again heard a signal which they concluded was emarating from the Benjamin Franklin Hotel, located on the corner of Fifth and Virginia Streets in Seattle, Washington (R. 66-67). Three of them entered the hotel, and, using a direction finder, determined that the signal was coming from room 1217. The investigators did not know at this time to whom the room had been registered, nor had they seen the persons registered in that room. The investigator in

charge heard a voice saying, "Testing 1-2-3-4 for modulation." This was at 1:46 P.M. The Federal Communications Commission investigators returned to the lobby and checked the hotel records and discovered that the room was registered in the names of the petitioners (R. 71). The investigator in charge then left the hotel and went to the United States Court House to secure a warrant for the arrest of the petitioners. He left at about 1:52 P.M. Two other investigators remained in the lobby of the hotel for a few minutes and then returned to their office. Upon arriving there, one of them received a telephone call from the hotel manager (R. 192, 212-213) who stated that petitioners were about to check out and that their car was located at the Motor Ramp Garage (R. 192-193, 212-213). Thereupon, one of the investigators telephoned the attendant at the garage, stating he was a federal officer and requesting the attendant to disable the car so that it could not be moved prior to the arrest of the petitioners. This was sometime between 1:52 P.M. and 2:15 P.M. (R. 193, 224-225). The attendant complied with this request by disabling petitioners' car (R. 225-226). Immediately after this, these two engineer-investigators went to the Motor Ramp Garage, a garage not connected with the hotel but independently operated, located at Sixth and Westlake, Seattle, Washington, approximately eight blocks from the Federal Court House and two blocks from the Benjamin Franklin Hotel, arriving there at 2:15 P.M. (R. 140). When they first entered the garage, they talked to an attendant there, had the attendant point out the car of the petitioners (a 1948 Packard convertible coupe) (R. 141-142), asked the at-

tendant to unlock the car, which was done, and they then searched the automobile and the baggage, and then returned the baggage to the car (R. 227-228). One of them then had a telephone conversation with the engineer in charge of the Federal Communications Commission as the result of which he went out to obtain the services of a policeman to prevent the petitioners from moving the car in the event they attempted so to do until a warrant for their arrest could be served (R. 143). A warrant for the arrest was subsequently issued and was served by Marshal Scully upon the petitioners in room 1217 of the Benjamin Franklin Hotel at 3:20 P.M. The Marshal searched the room but discovered nothing (R. 72-74). Following the arrest, the Federal Communications Commission investigators, who were neither law enforcement officers nor agents, again returned to the Motor Ramp Garage and removed the articles theretofore discovered from the automobile, which articles consisted of radio transmitting equipment and a receiver.

Between 1:47 P.M., when the Federal Communications Commission investigator went to the Court House to get a warrant for arrest, and 3:20 P.M., when the arrest was made, a search had been made of the petitioners' automobile in a garage several blocks from the place where the arrest was subsequently made, said search being made without warrant although a magistrate was then available and no apparent necessity for search without a warrant existed (R. 19-21, 108, 155), and said search and subsequent seizure of petitioners' property was made by persons who were not law enforcement officers and who, under any circumstances,

had no right to make a search and seizure with or without warrant.

Motion to suppress the evidence thus obtained was made prior to trial (R. 12-14). Two of the Federal Communications Commission investigators filed counter-affidavits in resistance to the motion. In both of the affidavits the investigators described themselves as engineers; in neither was there any intimation that the investigators were law enforcement agents or otherwise had the right or authority to search and seize the property of petitioners (R. 14, 17-21).

Thereafter, petitioners objected to the introduction of the articles seized (R. 76-77), renewed their objection at the conclusion of the Government's case (R. 231-235), and renewed their motion to suppress prior to presenting their case (R. 236). These objections and motions were overruled by the trial court. After the jury returned a verdict against petitioners, petitioners moved for a new trial on the ground, *inter alia*, that the trial court erred in failing to suppress the evidence thus obtained.

On the appeal to the Court of Appeals, that court held that petitioners were not entitled to claim the constitutional protection from unreasonable searches and seizures on the ground that they did not claim ownership or interest in the radio equipment seized, and because the car and its contents were in the hands of a bailee for hire.

In the appellate court, petitioners further claimed that Sections 301 and 318, Title 47, U.S.C., were unconstitutional because of an improper delegation of

legislative power to the Federal Communications Commission because the statute delegated to the Commission arbitrary discretion to waive or modify certain provisions therein and determine whom shall be prosecuted for violation thereof, and said statute set up no standard by which this discretion could be measured. The Court of Appeals rejected this contention and held that the statute set up a standard of public convenience and necessity which was sufficient and adequate.

SPECIFICATION OF ERRORS

1. The District Court erred: (a) in denying appellants' motion to suppress evidence obtained by unlawful search and seizure and to return evidence seized thereby; (b) in refusing to exclude said evidence at trial; and (c) in refusing to grant petitioners' motion for a new trial.

2. The Court of Appeals erred in holding that petitioners were not entitled to invoke the constitutional protection against unreasonable searches and seizures for failing to claim ownership or an interest in the articles seized.

3. The Court of Appeals erred in not holding that the search and seizure was unlawful and unreasonable.

4. The Court of Appeals erred in holding that Secs. 301 and 318 of Title 47, U.S.C., set up a sufficient and adequate standard to measure administrative discretion and was, therefore, constitutional.

CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED

Constitutional and other provisions involved are set forth in appendix pages 31 to 36, *infra*.

ARGUMENT

Summary of Argument

1. The District Court misapplied the rule of *Carroll v. United States*, 267 U.S. 132, in holding that that case was controlling to prevent suppression of the evidence obtained by illegal search and seizure.

2. Contrary to the sole and only evidence in the record as to petitioners' ownership of the seized articles, the Court of Appeals held that petitioners did not claim ownership of the seized articles, and, further, since petitioners' automobile was in the possession of a garage, a bailee for hire, they were not entitled to invoke the constitutional guarantee against unreasonable searches and seizure.

3. In failing to hold that the search and seizure was unlawful and unreasonable, the decision of the Court of Appeals was contrary to prior decisions of this court. *Agnello v. United States*, 269 U.S. 20; *Byars v. United States*, 273 U.S. 28; *Go-Bart Co. v. United States*, 282 U.S. 344; *Lustig v. United States*, 338 U.S. 74; *Johnson v. United States*, 333 U.S. 13; *United States v. Jeffers*, No. 3 October Term, 1951, decided November 13, 1951 (72 S.Ct. 93).

4. All motions and objections directed against the admission of or directed towards the striking of the

illegally obtained evidence were made in behalf of all three petitioners.

5. The decision of the Courts of Appeals in holding Secs. 301 and 318 of Title 47, U.S.C. constitutional is in conflict with prior decisions of this court. *Panama Refining Co. v. Ryan*, 293 U.S. 388; *Schecter Corp. v. United States*, 295 U.S. 495.

Point One

In refusing to grant petitioners' motion to suppress evidence illegally obtained, the District Court did so solely on the basis of *Carroll v. United States*, supra (R. 234, 235). It is apparent that the District Court misconstrued entirely the scope of the rule laid down in the *Carroll* case. Searches of automobiles without warrant have been upheld only on the basis of the National Prohibition Act or because the matters involved were contraband articles expressly declared to be subject to siezure and forfeiture by express act of Congress. See *Carroll v. United States*, supra; *Husty v. United States*, 282 U.S. 694; *Scher v. United States*, 305 U.S. 251; *Brinegar v. United States*, 338 U.S. 160 (Sec. 781 (b), Title 49, U.S.C.).

The holding in the *Carroll* case must be considered in the light of *United States v. DeRi*, 332 U.S. 581, where this Court said at page 584:

> "The belief that an automobile is more vulnerable to search without warrant than is other property has its source in the decision of *Carroll v. United States*, 267 U.S. 132. That search was made and its validity was upheld under the search and seizure provisions enacted for enforcement of the National Prohibition Act *and of that act alone.*

Transportation of liquor in violation of that Act subjected first the liquor, and then the vehicle in which it was found, to seizure and confiscation, and the person 'in charge thereof' to arrest. The court reviewed the legislative history of enforcement legislation and concluded (at page 147), 'The intent of Congress to make a distinction between the necessity for a search warrant in the searching of private dwellings and in that of automobiles and other road vehicles in the enforcement of the Prohibition Act is thus clearly established by the legislative history of the Stanley Amendment. Is such a distinction consistent with the Fourth Amendment? We think that it is. The Fourth Amendment does not denounce all searches and seizures, but only such as are unreasonable.' The progeny of the *Carroll* case likewise dealt with searches and seizures under this Act. *Husty v. United States,* 282 U. S. 694." (Footnotes omitted) (Emphasis supplied)

It would indeed be stretching the rule laid down in the *Carroll* case to an illogical conclusion to say that the express authorization of Congress declaring liquor to be contraband, and therefore subject to search and seizure, constituted justifiable grounds for permitting the search and seizure by law enforcement officers or by administrative agents of the Federal Government to search any vehicle believed to contain anything that would be of evidentiary value in carrying out that agency's delegation of authority. The basic framework for a police state would be complete if such a rule were adopted.

"When the right of privacy must reasonably yield to the right of search is, as a rule, to be de-

cided by a judicial officer, not by a policeman or government enforcement agent." *United States v. Asendio,* 171 F.(2d) 122.

"A search and seizure cannot be reasonable, and therefore justified, if it is based solely on the purpose of obtaining nothing but information generally, which may, perhaps, be proof that a crime had been committed. Evidence so obtained is not admissible against the person or persons whose rights have been violated. To admit it would be contrary to the Fifth Amendment in that part which reads 'No person * * * shall be compelled in any criminal case to be a witness against himself.'" *Boyd v. United States,* 116 U.S. 616; *Gouled v. United States,* 225 U.S. 298.

Petitioners respectfully submit that neither the *Carroll* case nor the horde of cases since decided in reliance thereon, go so far as to permit the search of any automobile, without a search warrant, that may be suspected of being connected with a crime, even on reasonable cause to believe that the automobile contains evidence that may be connected with the perpetration of a crime, except where there is reasonable ground to believe that the vehicle is being used to carry "contraband" as defined in the statutes.

The rule in the *Carroll* case was predicated on specific legislation and was not intended to be extended beyond the facts of that case. As the Supreme Court said in *United States v. DeRi, supra,* 584, 585:

"Obviously, the court should be reluctant to decide that a search thus authorized by Congress was unreasonable and that the Act was therefore unconstitutional. In view of the strong presumption

of Constitutionality due to an act of Congress, especially when it turns on what is 'reasonable,' the *Carroll* decision falls short of establishing a doctrine that, *without such legislation,* automobiles nonetheless are subject to search without a warrant in enforcement of all Federal Statutes. *This court has never yet said so.*" (Emphasis supplied)

It is well to observe the caution of the Supreme Court in the *DeRi* case:

> "We need not decide whether, without such Congressional authorization as was found controlling in the *Carroll* case, any automobile is subject to search without warrant *on reasonable cause to believe it carries contraband.*" *United States v. DeRi, supra.* (Emphasis supplied)

It must be borne in mind that in the case now before the court, radio transmitters and receivers are not contraband. The mere fact of possession of these articles violates no law of the United States and subjects no one to arrest. Furthermore, having already illegally disabled petitioners' car, there was no necessity for an immediate search; petitioners could not have driven off in their disabled car. The investigators were present to personally detain petitioners (R. 194), or to follow them (R. 140). There were no exceptional circumstances present to justify the actions of the investigators in proceeding to search and seize without a warrant. See *United States v. Jeffers, supra.*

Point Two

Throughout the entire trial of the case, the United States Attorney tacitly conceded petitioners' ownership of the radio equipment and urged only, as the basis

for denial of the motion to suppress, that the facts in the case were governed by the decision in *Carroll v. United States, supra.* On the appeal, the Court of Appeals apparently agreed with counsel for petitioners that the *Carroll* case was not controlling for it cannot be contended that the Court of Appeals "overlooked" the *Carroll* case; the trial court made it clear that it denied petitioners' motion because it deemed that case controlling (R. 234-235). The respondent United States devoted several pages of its brief in the Court of Appeals in discussing that case, as did petitioners. During the course of oral argument, the members of the Court of Appeals in open court expressed the opinion that the *Carroll* case was not controlling. But the appellate court then proceeded to deny petitioners the right to claim the protection of the Constitution against unreasonable search and seizure on the ground that petitioners did not claim ownership of or an interest in the articles seized (R. 323). This is contrary to the theory upon which the case was tried and contrary to the sole and only evidence on this point in the case.

The evidence clearly showed ownership in the petitioners. The testimony was that petitioner George LaClair *bought the equipment for* $50.00. His testimony is as follows:

> "Q. With reference to Plaintiff's Exhibits 5 and 6, the radio transmitter and equipment, when did you first see the items contained in those two exhibits?
>
> A. Well, the items contained in the exhibit I seen the early part of that week. We got there Sunday night, I would say it was either Monday or

Tuesday. I didn't see the case, the suitcase I didn't see. I seen the contents of it, but not the suitcase.

Q. Where was it that you saw it?

A. In Olympia, Washington.

Q. Who was present?

A. There was Casey, Plesa, there was two other gentlemen present and myself.

Q. Name who the other gentlemen were.

A. One fellow's name was Johnny Wilcie, and the other gentleman, I don't know his name. I know him by sight but I don't know his name.

Q. Where was it?

A. In a restaurant in Olympia.

Q. Where was this equipment?

A. Johnny Wilcie had it.

Q. Did you have a conversation, all of you together, about this equipment?

A. Yes, sir." (R. 250) * * *

"Q. Then what occurred? Just tell what happened.

A. Well, we didn't do any business with him, we didn't know if we had any use for it, so finally he got to the point where he would take $50. He said the equipment was worth a couple of hundred dollars, *so I bought it for* $50." (R. 252)

"Q. Were you at any time hiding this machine from anybody?

A. No, sir.

Q. Never tried to hide it?

A. No, sir.

Q. Where was the machine going when it was in your car out there in the Motor Ramp Garage?

A. We decided to bring it to a radio man to try to get it so it would work." (R. 256) * * *

"Q. *You say after the purchase of this that you yourself paid for it but that everybody chipped in, is that correct?*

A. *Yes, sir.*" (R. 258) * * *

"Q. When John Wilcie sold you that transmitter, did he sell you that 3536 crystal there?

A. Whatever *he sold me is there,* outside of maybe a battery, a battery or the big bag, we bought the big bag." (R. 261) * * *

To the same effect is testimony of petitioner Edward Plesa:

"Q. This Exhibit 5 and 6 which is the transmitter, when did you first see that?

A. I seen it a few days after they came in.

Q. And where did you first see it?

A. Down at Ben Moore's poolroom, I think it was." (R. 267) * * *

"Q. Tell the court and jury what occurred.

A. We went in and was going to start playing pool or something, fooling around in the poolroom there, and he come in and told us he was broke and wanted to leave, wanted to know if he could sell us something, borrow some money at first, and we couldn't give him none, we didn't know him well enough. So he had something he said he would sell us, so we asked him what it was, and he had a couple of boxes in this poolroom right there, and he showed it to us, and told us it was worth more

than he wanted for it, *and so we wind up buying it.* He told us we could use it for a shooting range or something like that. He says that is what it has been used for.

Q. *Is that where you got this transmitter then?*

A. *Yes, sir.*

Q. Then you came on up to Seattle with LaClair and Casey, is that right?

A. Yes, sir." (R. 268) * * *

This is corroborated by testimony of petitioner Ralph Casey:

"Q. Exhibits 5 and 6, you are familiar with the exhibits, aren't you? You know what those are?

A. Yes.

Q. When did you first see those?

A. I seen them down in this poolroom down there. That is the first I ever seen them.

Q. *Did you and George LeClair obtain them at that poolroom?*

A. *Yes.*

Q. *From whom did you obtain them?*

A. *John Wilcie.*" (R. 274) * * *

"Q. *After you obtained this equipment, which is Plaintiff's Exhibits 5 and 6, did you go out and purchase a bag to carry it in?*

A. *Yes, we did.*

Q. Who was with you on that occasion,

A. *George LaClair and Eddie Plesa.*" (R. 275) * * * (Emphasis supplied)

In the opinion as rendered by the Court of Appeals on June 27, 1951, that court stated:

> "It is unnecessary to consider whether the search and seizure in this case violated constitutional rights, for the reason that the right to immunity from unreasonable searches and seizures is a personal right and can only be asserted by one who claims ownership or right to possession of the premises searched or the property seized. (Citations omitted)
>
> "None of the appellants claimed ownership or interest in the Motor Ramp Garage, the place where the search occurred. Therefore, they have no standing to complain of the search. Nor do the appellants claim ownership or an interest in the radio equipment seized. Therefore, they are not entitled to prevent the introduction in evidence of the articles seized in such search."

In petitioners' brief in support of their petition for rehearing, petitioners called to the Court of Appeals' attention the record wherein uncontradicted proof of ownership of the radio equipment in the petitioners' was established. Whereupon, the Court of Appeals by entry of an order dated September 14, 1951, amended the opinion of June 27, 1951, so that the next to the last sentence in that portion of the opinion quoted above was changed to include the words "in the showing made on the motion to suppress" (R. 323). It would seem that in departing from the theory of the Government's case, in holding that the petitioners made no claim to ownership of the property seized, and in amending its opinion to meet the petitioners' proof of ownership,

the Court of Appeals went to unreasonable lengths to uphold the conviction of petitioners.

But even so, the amended opinion and holding of the Court of Appeals is contrary to prior decisions of this court and cannot stand, for even though the fact of ownership was not clearly brought out in petitioners' affidavit before trial in support of the motion to suppress, after the evidence in the trial clearly showed that petitioners owned the property, the trial court should have granted petitioners' motion to strike the evidence or granted their motion for a new trial because of the failure to suppress the evidence thus unlawfully obtained. *Gouled v. United States, supra,* 312-313; *Amos v. United States,* 255 U.S. 313.

The Court of Appeals also held that "The conclusion above reached is not affected by the circumstance that the articles seized were located in appellant LaClair's automobile. In our opinion, since appellant LaClair did not claim ownership or an interest in the articles seized, any constitutional immunity to which he might otherwise have been entitled with respect to his automobile and its contents was lost when he placed the garage, a bailee for hire, in possession of his automobile". (R. 323). This holding is certainly erroneous in the light of *United States v. Jeffers, supra,* where this Court held that the implied permission to enter a hotel room given to "such persons as maids, janitors or repairmen in the performance of their duties" does not remove hotel rooms from the protection of the Fourth Amendment. Likewise, the fact that George LaClair placed his car in a garage, a bailee for hire, and left

the keys with the attendant did not remove him from the protection of the Fourth Amendment.

Certainly, petitioners' position here is much stronger than that of Jeffers! In the *Jeffers* case, the search was held to be illegal where the objects seized were contraband. Here, the objects were a radio transmitter and receiver, which in no sense can be considered contraband.

Point Three

It is elementary that only unreasonable searches and seizures are prohibited by the Fourth Amendment to the Constitution. *Carroll v. United States, supra.* If legally obtained, the radio equipment seized was competent evidence in establishing the corpus delicti and identifying the petitioners as parties sought in an investigation of unauthorized radio transmissions. Without this evidence, petitioners would have been entitled to a directed verdict at the close of presentation of evidence.

A search without warrant is not defendable as incidental to a lawful arrest where the search is made by Federal investigators who did not make the arrest and where the search was made in the absence of the persons who were subsequently arrested. *Lustig v. United States, supra.* Protection under the Fourth Amendment to the Constitution extends to all equally, to those justly suspected and accused as well as to the innocent. *Agnello v. United States, supra; Go-Bart Co. v. United States, supra.* Any search prosecuted in violation of the Constitution cannot be made lawful by what it

brings to light. *Byars v. United States, supra; United States v. DeRi, supra.*

The record here disclosed that at least one hour prior to the arrest of petitioners, one of the Federal communications Commission investigators had ordered the disabling of petitioners' car (R. 72-74, 224-226) (which act in itself constituted an arrest without warrant), and he and one other Federal investigator searched petitioners' car and baggage without first obtaining a warrant and discovered the radio equipment. Even though the car was in a public garage and the garage attendant had access to the keys, and, as a result, access to the car, this in no way removes the search from under the bar of the Fourth Amendment. *United States v. Jeffers, supra.* The fact that the investigators at that time returned the articles to the automobile and did not permanently confiscate the articles until after the arrest had been made would not make a subsequent seizure lawful. If the first search, being illegal, reveals the items which are later seized, the fact that the actual confiscation was made with a warrant does not wipe the taint of illegality from the entire search and seizure. The search and seizure are incapable of being untied and separated. *United States v. Jeffers, supra.*

However, the record here shows that *at no time during the entire search and seizure did the investigators procure a search warrant.* That the search and seizure was not incidental to a lawful arrest is amply born out by the record. None of the Federal investigators were in the position of being the arresting officer, as the arrest was made by a Federal Marshal (R. 178-181).

In addition, the Federal Communications Commission investigators were not in the class of Federal officers entitled to make arrests, either with or without warrant. Sections 3041, 3052 and 3053 of Title 18, U.S.C. The automobile was located in a garage two city blocks from the place of the arrest, neither the vehicle nor the garage being within an area under the control of the petitioners. See *Harris v. United States,* 331 U.S. 145; *United States v. Rabinowitz,* 339 U.S. 56. The search was begun a full hour or more prior to the arrest. It is evident that the search was made solely for the purpose of seizing whatever might be turned up on examination of the baggage in the hope that it might be of evidentiary value in connecting the petitioners with a federal crime under investigation. Such practice has been universally condemned. See *Go-Bart Co. v. United States, supra; Lefkowitz v. United States,* 285 U.S. 452; *United States v. Kirschenblatt,* 16 F.2d 202.

The language of the court in the case of *Johnson v. United States, supra,* is pertinent:

> "The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity

and leave the people's homes secure only in the discretion of police officers. Crime, even in the privacy of one's own quarters, is, of course, of grave concern to society, and the law allows such crime to be reached on proper showing. The right of officers to thrust themselves into a home is also a grave concern, not only to the individual, but to a society which chooses to dwell in reasonable security and freedom from surveillance. * * * "

No excuse was shown for the failure to obtain a search warrant. The car had been *immobilized by the garage attendant at the request of the Federal Communications Commission agents.* It had been seized *at that time,* nearly an hour before the issuance of a warrant of arrest. Even before the warrant of arrest had been issued, the agents had made a search of the automobile.

When it becomes apparent during the trial that there has been an unconstitutional seizure of the property of the accused, the court should exclude the property and any testimony relating thereto given by the government agents who made the unlawful seizure on motion of the accused made after both testimony and property have been introduced in evidence against him, and this has been held to be the rule even though the trial court, prior to trial, had denied the motion to suppress. *Amos v. United States, supra; Agnello v. United States, supra; Gouled v. United States, supra.*

In the present case, if the evidence of what the officers found were stricken from the record, there is little left but suspicion that a crime had been committed. There is no corpus delicti, and no case against

petitioners. Therefore, judgment against petitioners should be reversed and petitioners discharged and left to go hence free and unfettered.

Point Four

All during the trial, the United States Attorneys and the District Court understood and treated all motions and objections made by petitioners' counsel as being made in behalf of all the petitioners. This was also true in the handling of the case before the Court of Appeals. Now that the case is before the Supreme Court of the United States, respondents suggest for the first time that petitioners Casey and Plesa have no standing to object to the search and seizure "by their failure to join in the motion to suppress or to assert, until after the seized evidence had been admitted, any property interest in it" (Note 2, page 9, respondent's memorandum in answer to petitioners' brief in support of petition for writ of certiorari).

The affidavit of petitioner LaClair in support of the motion to suppress indicated the nature of the motion and that it was made on behalf of all the petitioners when he stated that ". . . said search and seizure was against the wishes of affiant *and the other defendants*" (R. 13-14) (Emphasis supplied).

Each time the transmitter and receiver were offered in evidence, counsel for petitioners objected and moved to suppress (R. 76-77, 231-233). It cannot be denied that the objections and motions were made on behalf of all three petitioners. The District Court, itself, treated the motion and objections as being made in behalf of all three petitioners by ruling: "The objec-

tions to those exhibits and *each and all the objections are overruled.* . . . The motion is denied as to *each defendant*" (R.235-236) (Emphasis supplied).

It is apparent from other circumstances attending the trial of petitioners that, as a practical matter, the trial court and counsel for petitioners and respondent all intended to and did treat all motions and objections to the admission of the illegally seized evidence as being made on behalf of all petitioners. Since all three were being tried at the same time, there was no way for the trial court to grant the motion to suppress as to one petitioner and order return of the equipment to him, and deny it as to the others, *unless* the court were to order separate trials for each of the defendants. It would be illogical and highly prejudicial to the petitioner benefitted under the ruling to have such evidence admitted against the other two petitioners during a time when he was being tried. Furthermore, as a practical matter, assuming for the purpose of argument only, the trial court had granted the motion to suppress as to petitioner LaClair alone, under the form of the motion the court would have also ordered the return of this equipment to LaClair. Upon the return of the equipment, there would be nothing present for the respondent to offer in evidence. However, aside from the practical aspects as pointed out, it is apparent that all the motions and objections directed against the admissibility of the radio and transmitters were made in behalf of all three petitioners.

In support of its present position, the United States cites the dicta in *Cogen v. United States*, 278 U.S. 221,

223. The rule suggested by respondent is but a rule of practice, *Gouled v. United States, supra; Cogen v. United States, supra,* and as stated by this Court in the *Gouled* case at page 312:

> "We think rather that it is a rule to be used *to secure the ends of justice* under the circumstances presented by each case, and where, in the progress of a trial it becomes probable that there has been an unconstitutional seizure of papers, it is the duty of the trial court to entertain an objection to their admission *or a motion for their exclusion and to consider and decide the question as then presented,* even where a motion to return the papers may have been denied before trial. *A rule of practice must not be allowed for any technical reason to prevail over a constitutional right.*" *Gouled v. United States, supra* (Emphasis supplied).

See also *Amos v. United States, supra,* where a motion to suppress evidence illegally obtained was made after commencement of trial and a motion to strike was made after admittance of the evidence were held to be timely. In the *Amos* case, the facts pertaining to the illegal search and seizure were brought out *after* the evidence had been introduced in evidence.

The *Gouled* and *Amos* cases were further amplified in the case of *Ganci v. United States,* 287 Fed. 60, cert. denied 262 U.S. 755, where at the time the evidence obtained by illegal search and seizure was offered and received in evidence, no objection nor appropriate motion to exclude was made. No motion to suppress was made prior to this. Thereafter the defendant, Ganci, took the stand. At the conclusion of his testimony, his

counsel moved "to strike out the testimony of the officer that was given with relation to taking a box out of Ganci's place on the ground that it appears from their evidence and from their testimony that they had no warrant of seizure, that they went into his place of business, to his home without any warrant of seizure, and that they took out of his place a box which they claim is a box which they produce here now, which is illegal evidence and has no place here."

This motion was denied. On appeal, the Court of Appeals (Second Circuit) held:

> "Whatever, at any time, may have been the view as to what constituted a seasonable application to require the government to return seized property or as to what should be regarded as a timely objection, there can now be no doubt that at any time prior to verdict, a motion such as was here made must be entertained."

The court cited *Gouled v. United States, supra,* and *Amos v. United States, supra.*

Point Five

Under prior decisions of this court, it has been established that legislative power is unconstitutionally delegated to administrative or executive officers when the legislation embodies no standard, or no definition of the circumstances and conditions under which the administrative or executive agency is to act. *Panama Refining Co. v. Ryan, supra; Schechter Poultry Corp. v. United States, supra.* In the *Panama Refining Co.* case, a standard measured in terms of the public good was held to be insufficient. In the instant case, the

Court of Appeals held that a standard measured by "public interest, convenience or necessity" was sufficiently adequate (R. 326) to guide the Federal Communications Commission in determining when the provisions of Sections 301, 318 Title 47, U.S.C., should be modified to determine whom should or should not be prosecuted for violation thereof. It is submitted that "public interest, convenience or necessity" is no more susceptible of definition than "public good" and that the above cited sections of Title 47 U.S.C. are unconstitutional.

In support of its position upholding the constitutionality of Section 318 of the Federal Communications Commission Act, challenged on the ground that it contains an unlawful delegation of legislative authority to the Commission because no standard or guide is set up whereby the exercise of discretion may be measured, the court held that the phrase "public interest, convenience or necessity" is a sufficient standard, and cites two cases as supporting this conclusion. The first case is *Federal Radio Commission v. Nelson Bros. Co.*, 289 U.S. 266, 285. This case had only to do with the exercise of a discretion in the granting or withholding of licenses applied for by radio companies. The second case, that of *National Broadcasting Co. v. United States*, 319 U.S. 190, 225, in effect held that legislative power is not unconstitutionally delegated by the Federal Communications Act of 1934 in empowering the Federal Communications Commission to adopt such regulations applicable to radio stations engaged in chain broadcasting, and further holding that the Federal Communica-

tions Commission did not exceed its allowable discretion in adopting regulations providing that a broadcasting license shall not be granted to a radio broadcasting station having certain contracts, agreements, etc., with a network organization which precludes it from broadcasting the programs of other network organizations. These regulations are, of course, always subject to review by the proper constituted tribunals as provided by the Act. We do not see the similarity of the cases cited to a case where a Federal Communications Commission agent, by his own testimony, determines that if, in his opinion, an individual has violated the law he is guilty of a willful violation thereof notwithstanding the fact that in another section of the country, an equally capable and intelligent man, acting on the same facts but governed by his own personal philosophy, can determine that the man has committed no violation of the law. In other words, without a standard or guide, there can be no uniformity in the enforcement of the provisions of this Act. If the Legislature or the Congress declares the doing or omitting to do of any act to be a crime, it must set up standards by which the average individual can gauge and determine the nature of the violation. We respectfully submit that there is no such standard here. The testimony of Mr. Arlowe on this point emphasizes the interpretation given to the section by this particular office:

> "A. We determine what kind of operation they are doing, first, whether they have ever had a license, what type of operation they are carrying on. If it looks like they are making a broadcast with an unlicensed transmitter and that they are old

enough to realize what they are doing, and if they are using the radio for more than just to test or in preparation for getting a license.

Q. Then you go and talk to them, don't you, and find out what they are doing?

A. No, we don't. We judge from what they say on the air, what they do with it." (R. 283) * * *

It is respectfully submitted that the judgment of conviction should be reversed.

Respectfully submitted,

F. M. REISCHLING,
Counsel for Petitioners.

WARREN CHAN,
Of Counsel for Petitioners.

F. M. Reischling

APPENDIX

Fourth Amendment to the Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment to the Constitution:

No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

STATUTES

Section 301, Title 47, U.S.C.A.—License for radio communication or transmission of energy.

It is the purpose of this chapter, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission * * *. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory

or possession of the United States or in the District of Columbia to another place in the same Territory, possession, or District; or (b) from any State, Territory or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the U.S., or (c) from any place in any State, Territory, or possession of the United States to any place in any foreign country or to any vessel; or (d) within any State when the effect of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this chapter and with a license in that behalf granted under the provisions of this chapter.

Section 318, Title 47, U.S.C.A.:

The actual operation of all transmitting apparatus in any radio station for which a station license is required by this Chapter shall be carried on only by a person holding an operator's license issued hereunder, and no person shall operate any such apparatus in such station except under and in accordance with an operator's license issued to him by the Commission: Provided, however, That the Commission, if it shall find that the public interest, convenience, or necessity will

be served thereby may waive or modify the foregoing provisions of this section for the operation of any station except (1) stations for which licensed operators are required by international agreement, (2) stations for which licensed operators are required for safety purposes, (3) stations engaged in broadcasting, and (4) stations operated as common carriers on frequencies below thirty thousand kilocycles: Provided further, That the Commission shall have power to make special regulations governing the granting of licenses for the use of automatic radio devices and for the operation of such devices.

Section 781(b) Title 49, U.S.C.

As used in this section, the term "contraband article" means—

(1) any narcotic drug which has been or is possessed with intent to sell or offer for sale in violation of any laws or regulations of the United States dealing therewith, or which is sold or offered for sale in violation thereof, or which does not bear appropriate tax-paid internal-revenue stamps as required by law or regulations;

(2) Any firearm, with respect to which there has been committed any violation of any provision of the National Firearm Act, as now or hereafter amended, or any regulation issued pursuant thereto; or

(3) Any falsely made, forged, altered, or counterfeit coin or obligation or other security of the United States or of any foreign government; or any material or apparatus, or paraphernalia fitted or intended to be used,

or which shall have been used, in the making of any such falsely made, forged, altered, or counterfeit coin or obligation or other security.

Section 1254, Title 28, U.S.C.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

Section 2106, Title 28, U.S.C.A.

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be held as may be just under the circumstances.

Section 3041, Title 18, U.S.C.

For any offense against the United States, the offender may, by any justice or judge of the United States, or by any United States commissioner, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate, of any state where the offender may be found, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the office of the clerk of such

court, together with the recognizances of the witnesses for their appearances to testify in the case.

A United States judge or commissioner shall proceed under this section according to rules promulgated by the Supreme Court of the United States. Any state judge or magistrate acting hereunder may proceed according to the usual mode of procedure of his state but his acts and orders shall have no effect beyond determining to hold the prisoner for trial or to discharge him from arrest.

Section 3052, Title 18, U.S.C.

The Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation of the Department of Justice may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for felonies cognizable under the laws of the United States, where the person making the arrest has reasonable grounds to believe that the person arrested is guilty of such felony and there is a likelihood of his escaping before a warrant can be obtained for his arrest.

Section 3053, Title 18, U.S.C.

United States marshals and their deputies may carry firearms and may make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

COURT RULES

Revised Rules of the Supreme Court, Rule 38 (28 U.S.C.A.):

5. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

* * * (b) Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way probably in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

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No. 379

In the Supreme Court of the United States

OCTOBER TERM, 1951

RALPH CASEY, GEORGE LA CLAIR, AND EDWARD PLESA, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	5
Discussion	8

CITATIONS

Carroll v. *United States*, 267 U. S. 132	8, 9
Cogen v. *United States*, 278 U. S. 221	9
United States v. *Jeffers*, No. 3, this Term	8, 9
Statutes and Rule involved:	
Communications Act of 1934, 48 Stat. 1064, as amended by 50 Stat. 56, 47 U. S. C. 301, *et seq.*:	
Section 301	2, 5
Section 318	4, 5, 10
Section 501	4
Rule 41 (e), F. R. Crim. P	9

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OPINION BELOW

The opinion of the Court of Appeals (R. 318–326) is reported at 191 F. 2d 1.

JURISDICTION

The judgment of the Court of Appeals was entered on June 27, 1951 (R. 327) and a petition for a rehearing was denied on September 14, 1951 (R. 328). The petition for a writ of certiorari was filed on October 10, 1951. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a); F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether, on receipt of information that petitioners, for whom a warrant of arrest on a charge of illegal broadcasting was being sought, were about to depart in a car owned by one of them and parked in a public garage, federal investigators were justified in searching the car for radio broadcasting equipment without a warrant.

2. Whether Section 318 of the Communications Act of 1934, as amended, providing that the Federal Communications Commission, upon finding that the "public interest, convenience, or necessity" will be served thereby, may waive or modify the statutory provisions requiring an operator's license for radio broadcasts, is unconstitutional as an unlawful delegation of legislative authority to the Commission.

STATUTES INVOLVED

The pertinent provisions of the Communications Act of 1934, 48 Stat. 1064, as amended by 50 Stat. 56, 47 U. S. C. 301, *et seq.* are as follows:

Section 301:

> It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any

right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the District of Columbia to another place in the same Territory, possession, or District; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Section 318:

The actual operation of all transmitting apparatus in any radio station for which a station license is required by this Act shall be carried on only by a person holding an operator's license issued hereunder, and no person shall operate any such apparatus in such station except under and in accordance with an operator's license issued to him by the Commission: *Provided, however,* That the Commission if it shall find that the public interest, convenience, or necessity will be served thereby may waive or modify the foregoing provisions of this section for the operation of any station except (1) stations for which licensed operators are required by international agreement, (2) stations for which licensed operators are required for safety purposes, (3) stations engaged in broadcasting, and (4) stations operated as common carriers on frequencies below thirty thousand kilocycles: *Provided further,* That the Commission shall have power to make special regulations governing the granting of licenses for the use of automatic radio devices and for the operation of such devices.

Section 501:

Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing, in this Act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this Act

required to be done, or willfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished for such offense, for which no penalty (other than a forfeiture) is provided herein, by a fine of not more than $10,000 or by imprisonment for a term of not more than two years, or both.

STATEMENT

Petitioners were tried under a seven-count indictment, alleging violations of Sections 301 and 318 of the Communications Act of 1934 (47 U. S. C. 301, 318) (*supra*, pp. 2–4). Counts I, II and III charged three unlawful radio transmissions made "without a station license having first been granted by the Federal Communications Commission" in violation of Section 301 (R. 2–4). Counts IV, V and VI dealt with the same communications and alleged that they violated Section 318, having been made "without a radio operator's license having first been issued by the Federal Communications Commission" (R. 4–6). Count VII was a conspiracy charge. The jury found the three petitioners guilty on the first six counts, but not guilty on count VII (R. 21–23). Petitioners Casey and LaClair were sentenced to imprisonment for 7 months on count I and to pay a fine of one dollar on each of counts II through VI inclusive (R. 24–28). Petitioner Plesa's sentence was identical, except that his imprisonment was

for 5 months instead of 7 (R. 28–30). On appeal (R. 30–31), the Court of Appeals unanimously affirmed the convictions (R. 327).

The evidence adduced at the trial disclosed that, after receipt of a tip that an unlicensed radio transmitter in Seattle, Washington, had been used to bilk bookies by enabling the scheming bettors to know the winners of horse races before placing their bets (R. 207–208), employees of the Federal Communications Commission tried repeatedly over a period of about a week to locate the unlicensed radio transmitter. On February 10 three Commission engineers, Hallock, Arlowe and Ames, conclusively identified the unauthorized broadcasts as coming from Room 1217 of the Ben Franklin Hotel (R. 66–70, 95–96, 133–138, 188–189). At about 1:50 p. m., Arlowe left the hotel to go to the United States Commissioner's office to obtain a warrant for petitioners' arrest (R. 71–72, 150).

A short time later, Hallock and Ames received word that petitioners were about to check out. They telephoned to a garage around the corner from the hotel, at which a car belonging to petitioner LaClair was stored, and requested the attendant to immobilize the car, which he did by removing some parts from the engine (R. 224–6). Ames and Hallock arrived at the garage at about 2:15 p. m., and were informed by Turner, the garage attendant, that some person had just put

two bags in the car (R. 140–141). At Ames' request Turner opened the back compartment with the car keys which were in his possession. Ames then opened a large suitcase and saw a radio transmitter; he told Turner to lock the car again. (R. 71–72, 141–142.)

About 3:20 p. m., Arlowe went to Room 1217 of the hotel with the United States marshal who arrested the three petitioners under a warrant of arrest (R. 72, 101, 178–180). After a futile search of the room for the radio equipment, Arlowe learned from Ames that the radio equipment was in the automobile (R. 73–74, 79–80, 101–104, 144–145). Arlowe went to the garage, directed the attendant, Turner, to open the car and then removed the bags containing the transmitter and the receiving equipment, which were received in evidence as Plaintiffs' Exhibits 5 and 6 (R. 75–77, 147–148, 196, 234–235). When the transmitter was tested, its frequency was the same as the signals heard during the illegal broadcasts made by petitioners (R. 108–109).

The evidence was uncontradicted that petitioners did not have, and did not apply to the Federal Communications Commission for, either operators' or station licenses (R. 285).

Before trial, petitioner LaClair moved to suppress the evidence as to the radio equipment taken from the automobile "against the wishes of affiant and the other defendants" (R. 13–14).

The District Court denied the motion. When the exhibits were introduced in evidence, counsel for all three petitioners objected to their admission (R. 76–77), but the District Court admitted them on the ground that the search of a movable vehicle was reasonable under the doctrine of *Carroll* v. *United States*, 267 U. S. 132. (R. 234–5.) After trial, all three petitioners moved for a new trial on the ground that the evidence should have been suppressed (R. 23–24). On appeal, the Court of Appeals held that it was unnecessary to consider the validity of the search since none of the petitioners claimed ownership in the garage where the search occurred or asserted an interest in the radio equipment seized at the time of the motion to suppress (R. 323). It further held that "any constitutional immunity to which [petitioner LaClair] might otherwise have been entitled with respect to his automobile and its contents was lost when he placed the garage, a bailee for hire, in possession of his automobile." (*Ibid.*)

DISCUSSION

The sole ground of the Court of Appeals' decision was that petitioners lacked standing to object to the search and seizure. At least as to petitioner LaClair, we think this ground of decision seems erroneous in the light of *United States* v. *Jeffers*, No. 3, this Term, decided November 13, 1951. We do not believe that the facts that the

car owned by LaClair was in a public garage, and that the garage attendant had the keys, destroyed LaClair's standing to object to a search of the car.[1] Indeed, his claim to standing would appear to be considerably stronger than that of *Jeffers*, whose box containing narcotics was stored without authorization in his aunt's hotel room. Accordingly, at least as to petitioner LaClair, the ground of decision adopted by the Court of Appeals seems erroneous.[2] Since the question as to the application to the facts of this case of the rule of *Carroll* v. *United States*, 267 U. S. 132, was not considered by the Court of Appeals and is not free from difficulty, we suggest that this Court remand the case to the Court of Ap-

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[1] Cf. *Jeffers* opinion at p. 4, pointing out that the implied permission to enter a hotel room, given to "such persons as maids, janitors or repair men in the performance of their duties" does not remove hotel rooms from the protection of the IVth Amendment.

[2] The other petitioners, whose ownership, jointly with LaClair, in the radio equipment was undisputed (R. 258, 268, 274–275), may have lost standing to object to the search and seizure, unless that standing was lost by their failure to join in the motion to suppress, or to assert, until after the seized evidence had been admitted, any property interest in it. Cf. *Cogen* v. *United States*, 278 U. S. 221, 223, Rule 41 (e), F. R. Crim. P. Since the validity of the search is properly in issue as to LaClair, we believe that it will promote efficient judicial administration to allow questions of standing of the other petitioners to be reexamined by the court below in the light of its disposition of that issue.

peals for further proceedings in the light of the Jeffers decision.[3]

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

November 1951.

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[3] Petitioners' assertion of unconstitutionality of § 318 of the Communications Act is plainly without merit. See opinion below, R. 325–326. In any event, that contention affects only Counts IV, V, and VI, on which fines of $1 were imposed.

U. S. GOVERNMENT PRINTING OFFICE: 1951

Brief for the U.S.

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CHARLES ELMORE CROPLEY

No. 379

In the Supreme Court of the United States

OCTOBER TERM, 1951

RALPH CASEY, GEORGE LA CLAIR, AND EDWARD PLESA, PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes and Rule involved	2
Statement	6
Summary of Argument	10
Argument	13
I. Petitioner La Clair had standing to challenge the legality of the search and seizure	14
II. Under the circumstances of this case the search of the car was unreasonable	16
III. The admission in evidence of the illegally seized radio equipment was reversible error as to all the petitioners	20
IV. Section 318 of the Communications Act is not unconstitutional as an unlawful delegation of legislative authority	23
Conclusion	26

CITATIONS

Cases:

Agnello v. *United States*, 269 U.S. 20	21
Amos v. *United States*, 255 U.S. 313	21
Ashwander v. *Tennessee Valley Authority*, 297 U.S. 288	13, 24
Brinegar v. *United States*, 338 U.S. 160	16, 18
Carroll v. *United States*, 267 U.S. 132,	9, 11, 12, 14, 16, 17, 18, 20, 21
Cogen v. *United States*, 278 U.S. 221	12, 21
Federal Commission v. *Broadcasting Co.*, 309 U.S. 134	13, 25
Gouled v. *United States*, 255 U.S. 298	21
Husty v. *United States*, 282 U.S. 694	16
Johnson v. *United States*, 333 U.S. 10	15
McDonald v. *United States*, 335 U.S. 451	23
National Broadcasting Co. v. *United States*, 319 U.S. 190	25
New York Central Securities Corp. v. *United States*, 287 U.S. 12	25
Regents v. *Carroll*, 338 U.S. 586	13, 25
Scher v. *United States*, 305 U.S. 251	11, 16, 17
Segurola v. *United States*, 275 U.S. 106	12, 20
United States v. *Di Re*, 159 F. 2d 818	12, 22
United States v. *Di Re*, 332 U.S. 581	18, 22, 23
United States v. *Jeffers*, 342 U. S. 48	10, 12, 14, 15, 20

Statutes: Page

Communications Act of 1934, 48 Stat. 1064, as amended by 50 Stat. 56, 47 U.S.C. 301 *et seq.*:

Sec. 301 ..... 2, 6
Sec. 307 ..... 13, 25
Sec. 318 ..... 4, 6, 24, 25
Sec. 501 4

Rule:

F. R. Crim. P., Rule 41(e) 5, 12, 21

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 379

RALPH CASEY, GEORGE LA CLAIR, AND EDWARD PLESA, PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Appeals (R. 318-326) is reported at 191 F. 2d 1.

JURISDICTION

The judgment of the Court of Appeals was entered on June 27, 1951 (R. 327), and a petition for a rehearing was denied on September 14, 1951 (R. 328). The petition for a writ of certiorari was filed on October 10, 1951, and certiorari was granted on December 3, 1951 (R. 330). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether petitioner La Clair, the owner of an automobile parked in a public garage, had standing to challenge the validity of a search of the automobile.

2. Whether, in the circumstances of this case, the search of an immobilized automobile parked in a public garage and the seizure therefrom of certain equipment, without a warrant, were reasonable.

3. Whether it was error to admit the seized evidence against codefendants having an interest in the seized equipment, who did not move to suppress before the trial but whose motion at the trial was denied on the merits.

4. Whether Section 318 of the Communications Act of 1934, as amended, providing that the Federal Communications Commission, upon finding that the "public interest, convenience, or necessity" will be served thereby, may waive or modify the statutory provisions requiring an operator's license for radio broadcasts, is unconstitutional as an unlawful delegation of legislative authority to the Commission.

STATUTES AND RULE INVOLVED

The pertinent provisions of the Communications Act of 1934, 48 Stat. 1064, as amended by 50 Stat. 56, 47 U.S.C. 301 *et seq.*, are as follows:

> Sec. 301. It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of inter-

state and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a) from one place in any Territory or possession of the United States or in the District of Columbia to another place in the same Territory, possession, or District; or (b) from any State, Territory, or possession of the United States, or from the District of Columbia to any other State, Territory, or possession of the United States; or (c) from any place in any State, Territory, or possession of the United States, or in the District of Columbia, to any place in any foreign country or to any vessel; or (d) within any State when the effects of such use extend beyond the borders of said State, or when interference is caused by such use or operation with the transmission of such energy, communications, or signals from within said State to any place beyond its borders, or from any place beyond its borders to any place within said State, or with the transmission or reception of such energy, communications, or signals from and/or to places beyond the borders of said State; or (e) upon any vessel or aircraft of the United States; or (f) upon any other mobile stations within the jurisdiction of the United States, except under and in accordance

with this Act and with a license in that behalf granted under the provisions of this Act.

Sec. 318. The actual operation of all transmitting apparatus in any radio station for which a station license is required by this Act shall be carried on only by a person holding an operator's license issued hereunder, and no person shall operate any such apparatus in such station except under and in accordance with an operator's license issued to him by the Commission: *Provided, however*, That the Commission if it shall find that the public interest, convenience, or necessity will be served thereby may waive or modify the foregoing provisions of this section for the operation of any station except (1) stations for which licensed operators are required by international agreement, (2) stations for which licensed operators are required for safety purposes, (3) stations engaged in broadcasting, and (4) stations operated as common carriers on frequencies below thirty thousand kilocycles: *Provided further*, That the Commission shall have power to make special regulations governing the granting of licenses for the use of automatic radio devices and for the operation of such devices.

Sec. 501. Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing, in this Act prohibited or declared to be unlawful, or who willfully and knowingly omits or fails to do any act, matter, or thing in this Act required to be done; or willfully and knowingly causes or suffers

such omission or failure, shall, upon conviction thereof, be punished for such offense, for which no penalty (other than a forfeiture) is provided herein, by a fine or not more than $10,000 or by imprisonment for a term of not more than two years, or both.

Rule 41(e), F.R. Crim. P.:

Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

STATEMENT

Petitioners were tried under a seven-count indictment alleging violations of Sections 301 and 318 of the Communications Act of 1934 (47 U.S.C. 301, 318) (*supra*, pp. 2-4). Counts I, II and III charged them with having made three unlawful radio transmissions "without a station license having first been granted by the Federal Communications Commission," in violation of Section 301 (R. 2-4). Counts IV, V and VI charged them with having made the same communications "without a radio operator's license having first been issued by the Federal Communications Commission," in violation of Section 318 (R. 4-6). Count VII was a conspiracy charge (R. 6-12). The jury found the three petitioners guilty on the first six counts, but not guilty on count VII (R. 21-23). Petitioners Casey and La Clair were each sentenced to imprisonment for seven months on count I and to pay a fine of one dollar on each of counts II through VI (R. 24-28). Petitioner Plesa's sentence was identical, except that his imprisonment was for five months (R. 28-30). On appeal (R. 30-31), the Court of Appeals affirmed the convictions (R. 327).

The evidence adduced at the trial disclosed that, after receiving a tip that an unlicensed radio transmitter in Seattle, Washington, had been used to cheat bookies in Everett, Washington, by enabling the scheming bettors to know the winners of horse races before placing their bets (R. 207-208), employees of the Federal Communications Commis-

sion tried repeatedly over a period of about a week to locate the unlicensed radio transmitter. During this period of time, they overheard, by use of various listening devices, the radio transmissions charged in the indictment (R. 59-67, 111-112, 122-129, 133-135, 171-178, 186-189). On February 10 three Commission engineers, Hallock, Arlowe and Ames, conclusively identified the unauthorized broadcasts as coming from Room 1217 of the Ben Franklin Hotel (R. 66-70, 95-96, 133-138, 188-189). At about 1:50 p.m., Arlowe left the hotel to go to the United States Commissioner's office to obtain a warrant for petitioners' arrest (R. 71-72, 150).

A short time later, Hallock and Ames, who had returned to their office, received word from the hotel manager that petitioners were about to check out, but that he was going to hold the garage check for their car as security for their hotel bill (R. 82, 139-140, 192, 212-213). The car, which belonged to petitioner La Clair, was stored at the Motor Ramp Garage, located two blocks from the hotel (R. 13, 20, 75, 193). By telephone, Hallock requested the garage attendant to immobilize the car, which he did by removing some parts from the engine (R. 200, 224-226). Ames and Hallock then went to the garage, arriving at about 2:15 p.m., at which time they were informed by Turner, the garage attendant, that some person had just put two bags in the car (R. 140-141). At Ames' request, Turner opened the back compartment with the car keys which were in his possession. Ames then opened a large suit-

case in the compartment and saw a radio transmitter. Nothing, however, was removed from the car and it was relocked. (R. 142, 227-228.) Two Seattle policemen were summoned to stand by in the garage to prevent possible violence (R. 142-143, 153-155, 197-198, 228-230, 288-289).

In the meantime Arlowe had secured a warrant for petitioners' arrest, after being detained for half an hour at the United States Commissioner's office (R. 72). During this period Hallock had, from the garage, twice called the Federal Communications office, once while Arlowe was waiting at the Commissioner's office and again after the warrant of arrest had been issued (R. 141, 142, 197-198). Arlowe had also called the Federal Communications office. (R. 198).

About 3:20 p.m., Arlowe, armed with the arrest warrant, went to Room 1217 of the hotel with the United States Marshal, who arrested the three petitioners (R. 72, 101, 178-180). After a futile search of the room for the radio equipment, Arlowe learned from Ames that the radio equipment was in the automobile (R. 73-75, 79-80, 101-104, 144-145). Arlowe went to the garage, directed the attendant, Turner, to open the car, and then removed the bags containing the transmitter and the receiving equipment, which were received in evidence as Plaintiff's Exhibits 5 and 6 (R. 75-77, 147-148, 196, 234-235). The two policemen and Hallock had remained with the car until the equipment was

seized (R. 80, 87). The frequency of the seized transmitter was the same as the signals heard during the illegal broadcasts made by petitioners (R. 108-109). The evidence was uncontradicted that petitioners did not have, and had not applied to the Federal Communications Commission for, either operators' or station licenses (R. 285).

Before trial, petitioner La Clair moved to suppress as evidence the radio equipment taken from his automobile, and for its return to him (R. 12). In his supporting affidavit he alleged that it was taken "against the wishes of affiant and the other defendants" (R. 13-14). The District Court denied the motion. No claims as to the ownership of the equipment were made at that time, but during the trial petitioners testified that it was owned by all of them jointly (R. 258, 268, 274). When the exhibits were offered in evidence, counsel for all three petitioners objected to their admission (R. 76-77). At the close of the Government's evidence, this objection was renewed and argued, but the District Court admitted the exhibits on the ground that the search of a movable vehicle was reasonable under the doctrine of *Carroll* v. *United States*, 267 U.S. 132 (R. 231-235). A motion on behalf of all three petitioners to suppress the seized evidence was then denied (R. 236). After trial, all three petitioners unsuccessfully moved for a new trial on the ground, *inter alia*, that the evidence should have been suppressed (R. 23-24, 31).

On appeal, the Court of Appeals held that it was unnecessary to consider the validity of the search since none of the petitioners claimed ownership of the garage where the search occurred or asserted, at the time of the pre-trial motion to suppress, an interest in the radio equipment (R. 323). It further held that "any constitutional immunity to which [petitioner La Clair] might otherwise have been entitled with respect to his automobile and its contents was lost when he placed the garage, a bailee for hire, in possession of his automobile" (*ibid*).

SUMMARY OF ARGUMENT

I

The Court of Appeals concluded that petitioners had no standing to challenge the validity of the search, since (1) petitioners Casey and Plesa had made no motion to suppress before trial and (2) petitioner La Clair, who did file such a motion, had no interest in the garage where the car was stolen, and in his motion failed to claim an interest in the property seized.

We believe this ground of decision as to petitioner La Clair is erroneous, particularly in the light of the intervening decision of this Court in *United States* v. *Jeffers*, 342 U.S. 48. In the *Jeffers* case, this Court pointed out that, even though a hotel manager has a key to a hotel room and may for certain purposes enter the room, the use of such key by law enforcement officers to enter and search

the room without the permission of the occupant is unlawful. Likewise, we think, in storing his automobile in a public garage, petitioner La Clair did not so completely part with possession that he can be deemed to have lost standing to challenge an unlawful search of it. Irrespective of ownership of the property seized, he was entitled to have the evidence taken from the car suppressed if the search of his car was unlawful.

II

The district court thought the search, without a warrant, of La Clair's automobile sustainable under the doctrine of *Carroll* v. *United States*, 267 U.S. 132, that a movable vehicle can upon probable cause be searched without a warrant. That rule is a rule of necessity, and the necessity may exist even though the car is parked in a garage. *Scher* v. *United States*, 305 U.S. 251. Hence, when the agents learned that petitioners were about to leave and had placed their bags in the car, the agents may have been justified in taking steps to render the car immobile. But, having accomplished that, they had ample time to get a warrant, particularly since local law enforcement officers were guarding the car. The entire search and seizure cannot be justified by necessity.

III

Uncontroverted evidence was introduced at the trial showing that all the petitioners jointly owned

the radio equipment seized. Thus they all had standing to suppress that evidence provided they had taken timely action to do so. *United States* v. *Jeffers*, 342 U.S. 48. Although petitioners Casey and Plesa failed to move before trial to suppress the evidence, we think the court's action during the trial in denying on the merits a motion to suppress was reversible error as to them as well as La Clair.

If a motion to suppress is not made before trial, the court may ordinarily refuse to entertain such a motion later. *Segurola* v. *United States*, 275 U.S. 106, 111-112. But "the court in its discretion may entertain the motion at the trial" (Rule 41(e), F. R. Crim. P.). See also *Cogen* v. *United States*, 278 U.S. 221, 223. In the instant case, as the Government did not object to consideration of the motion during trial as untimely, the court denied it "as to each defendant" (R. 236) on the ground that the search fell within the doctrine of the *Carroll* case. Thus, the motion was entertained and erroneously denied on the merits. Such action eliminated the failure of these petitioners to assert their rights promptly (*United States* v. *Di Re*, 159 F. 2d 818, 820 (C.A. 2)), and the court's erroneous decision was reversible error as to all petitioners.

IV

There is no occasion for this Court to consider petitioners' contention that Section 318 of the Federal Communications Act is unconstitutional, for

the Court will not pass upon the constitutionality of an act of Congress if there is another ground for disposing of the case. *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 347, Justice Brandeis concurring. In any event, there is no merit in petitioners' claim that the provision authorizing the Commission to waive or modify the statutory requirement of a licensed radio operator, upon a finding that "the public interest, convenience, or necessity will be served thereby," contains an unconstitutional delegation of legislative power. Petitioners' case does not come within that provision, for there is no assertion that for any reason they were entitled to an exemption from the license requirement. This Court has held that a similar provision of Section 307, providing for the granting of station licenses by the Commission "if public convenience, interest, or necessity will be served thereby," was not too vague. *Federal Communications* v. *Broadcasting Co.*, 309 U.S. 134, 137-138; *Regents* v. *Carroll*, 338 U.S. 586, 598.

ARGUMENT

The Court of Appeals did not consider the validity of the search because it concluded that petitioners had not before trial shown that they had standing to object to the search and seizure. Since petitioner La Clair did, before trial, move to suppress and did claim ownership of the automobile searched, we thought this ground of decision erroneous as to him, particularly in the light of the

intervening decision of this Court in *United States v. Jeffers*, 342 U.S. 48. As the Court of Appeals had not considered the validity of the search and seizure, and particularly the application of the rule of *Carroll v. United States*, 267 U.S. 132, to the facts of this case, we suggested, in the Government's memorandum in response to the petition for a writ of certiorari, that the Court remand the case to the Court of Appeals for further consideration. We pointed out that petitioners Casey and Plesa might have lost standing to object to the search and seizure by their failure to join in the motion to suppress, or to assert, until after the seized evidence had been admitted, any proprietary interest in it.

We have subsequently concluded, for the reasons hereinafter set forth, that the search and seizure was illegal, and that the admission in evidence of the illegally seized radio equipment was reversible error as to each petitioner. For this reason, we concede that the judgment below was erroneous and should be reversed.

I

Petitioner La Clair Had Standing to Challenge the Legality of the Search and Seizure

The Court of Appeals concluded (R. 323) that petitioners had no standing to challenge the validity of the search since (1) petitioners Casey and Plesa had made no motion to suppress before trial

and (2) petitioner La Clair, who did file such a motion, had no interest in the garage where the car was stored, and in his motion failed to claim an interest in the property seized.

As stated in our prior memorandum, we believe this ground of decision as to petitioner La Clair is erroneous, particularly in the light of the intervening decision of this Court in *United States* v. *Jeffers*, 342 U. S. 48. See also *Johnson* v. *United States*, 333 U. S. 10. In the *Jeffers* case, this Court pointed out that although hotel employees have a key to a hotel room and may for certain purposes enter the room, the use of that key by law enforcement officers to enter and search the room without the permission of the occupant is unlawful. An analogous situation is, we think, presented when the owner of a car stores his car in a public garage and gives the keys to the attendant. The control of the car is relinquished only for proper garage functions. The search of the car's trunk is not within the implied permission given by the car owner to the garage attendant. Hence, in storing his automobile, petitioner La Clair did not so completely part with possession that he can be deemed to have lost standing to object to an unauthorized search of the car. Irrespective of whether or not he claimed ownership of the equipment seized, he was entitled to have the evidence taken from the car suppressed if the search of his car was unlawful.

II

Under the Circumstances of this Case the Search of the Car Was Unreasonable

The search of La Clair's automobile was made without a warrant. Hence, it could be valid only if the circumstances were such as to bring it within one of the recognized exceptions in which a search without a warrant is regarded as reasonable. The district court thought the search sustainable under the rule of the *Carroll* line of decisions (*Carroll* v. *United States*, 267 U.S. 123; *Husty* v. *United States*, 282 U.S. 694; *Scher* v. *United States*, 305 U.S. 251; *Brinegar* v. *United States*, 338 U.S. 160), that a movable vehicle can upon probable cause be searched without a warrant.

That rule, however, is a rule of necessity. This Court in the *Carroll* opinion quoted the House Committee Report (267 U.S. at 146): "It is impossible to get a warrant to stop an automobile. Before a warrant could be secured the automobile would be beyond the reach of the officer with its load of illegal liquor disposed of." The Court then pointed out that the Fourth Amendment had always been construed "as recognizing a necessary difference between a search of [buildings] in respect of which a proper official warrant readily may be obtained, and a search of [movable vehicles] where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality

or jurisdiction in which the warrant must be sought" (p. 153). And the Court carefully defined the rule in terms of necessity (p. 156):

> * * * In cases where the securing of a warrant is reasonably practicable, it must be used * * *. In cases where seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause.

The necessity may exist even though the car has been brought to a stop. In *Scher* v. *United States*, *supra*, where the *Carroll* rule was applied, officers followed the defendant home and searched his car immediately after he had parked it in a garage adjacent to his residence. But the automobile, though not moving, was still a movable vehicle and could have been quickly removed from the jurisdiction unless immediately searched. (Compare also the references in *Carroll* v. *United States*, 267 U.S. 132, 151-3 to the power to search vessels at dock.)

We believe, therefore, that situations exist in which the search of an automobile without a warrant would be warranted by necessity even though the automobile is parked in a garage. In this very case, if the only facts adduced had been that the agents, after identifying the occupants of Room 1217 as the unauthorized broadcasters, learned, while one of their number was trying to get a warrant of arrest, that the occupants had placed their bags in the car and were about to check out, we

think that the search and seizure might well have been considered necessary under the circumstances.[1]

Those were not, however, the only facts bearing on the validity of the search and seizure in this case. Ames and Hallock, the agents of the Federal Communications Commission who were at the garage, were informed at 2:15 p.m. that the bags had been taken to the car (R. 140-141). The radio equipment was not seized until about 3:45 p.m. (R. 72-76), after the arrests had been made. During this period of time Arlowe, another employee of the Federal Communications Commission, obtained a warrant of arrest, after waiting for half an hour at the United States Commissioner's office (R. 72). Hallock, from the garage, twice called the Federal Communications Commission office, once while Arlowe was waiting at the Commissioner's office and again after the warrant of arrest had been issued (R. 141, 142, 197-198). Arlowe was also in telephonic communication with his office. Arlowe could easily have secured a search warrant at the same time he obtained the warrant of arrest.

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[1] The suggestion in *United States* v. *Di Re*, 332 U.S. 581, 585, that the Carroll doctrine is limited to situations in which searches of moving vehicles are specifically authorized by statute, was, we think, overruled by the *Brinegar* decision. A statute could not enlarge the scope of a constitutional amendment. The *Carroll* decision referred to the early statutes merely as reflecting the understanding of the Fourth Amendment by contemporary legislators, not as enlarging the definition of a reasonable search.

Moreover, there was no need for an immediate search and seizure, either at about 2:30 p.m. when the agents first searched the car, or at 3:45 p.m. when the equipment was seized. Neither petitioners, nor any one acting in their behalf, could possibly have moved the automobile. It was totally immobilized. The car was located in a public garage and the hotel manager was holding the claim check (R. 213). Certain parts had been removed from the motor without which it would not operate (R. 225). The keys to the car were in the possession of the garage attendant (R. 227), who was cooperating with the agents. Two police officers and a Federal Communications agent were guarding the car to prevent anyone from removing it (R. 154-155), or, indeed, from going to it. They did, in fact, intercept Mr. Donofrio, a friend of petitioners, who attempted to go to the car after petitioners had been arrested (R. 198).

The direction by the law enforcement officers to the garage attendant to immobilize the car would seem to have been justified by the necessities of the situation and, if such act be considered the commencement of a search, we think it might well be deemed reasonable under the circumstances. But, having accomplished the effective immobilization of the car, the agents had ample opportunity to get a warrant and were not justified in seizing the property without it. We therefore conclude that

the search and seizure as a whole cannot be supported under the *Carroll* rule.[2]

III

The Admission in Evidence of the Illegally Seized Radio Equipment Was Reversible Error as to All the Petitioners

Uncontroverted evidence was introduced at the trial which showed that all the petitioners owned the radio equipment seized (R. 258, 268, 274). By virtue of this ownership they all clearly had standing to suppress the illegally seized evidence provided they had taken timely action to do so. *United States* v. *Jeffers, supra*, 342 U.S. 48. Although petitioners Casey and Plesa failed to move before trial to suppress that evidence, we think that the trial judge having entertained and erroneously denied on the merits their motion to suppress made during the trial, their failure to move prior to the trial was cured and the court's decision was reversible error as to them as well as La Clair.

It is true that, in order to interject a violation of his Fourth Amendment rights as a bar to the admission of evidence, a defendant must ordinarily move before trial for the suppression of illegally obtained evidence. *Segurola* v. *United States*, 275 U.S. 106, 111-112. This requirement is embodied

[2] While the seizure of the equipment did not occur until after the arrest of petitioners, the automobile was first searched and the radio equipment discovered in the trunk about an hour prior to the arrest (R. 72-76, 140-141). Viewing the search and seizure as one transaction (see *United States* v. *Jeffers*, 342 U.S. 48, 52), we do not believe it could be sustained as incident to the arrest.

in Rule 41(e), F. R. Crim. P. But that rule also provides that "the court in its discretion may entertain the motion [for suppression] at the trial." This is a restatement of the prior law that the requirement of a pretrial motion is a rule "of practice; and is not without exceptions." *Cogen* v. *United States*, 278 U.S. 221, 223. See also *Gouled* v. *United States*, 255 U.S. 298, 312-313; *Amos* v. *United States*, 255 U.S. 313; *Agnello* v. *United States*, 269 U.S. 20, 34-35. Hence, if a defendant fails to move before the trial for the suppression of illegally obtained evidence, the judge may, and ordinarily should, refuse to entertain such a motion during the trial. But, on the other hand, he may do so in his discretion.

In the instant case the judge did entertain during the trial a motion by all the petitioners to suppress the evidence (R. 231-236). As the Government did not object to consideration of the motion as untimely, the court denied it "as to each defendant" (R. 236) on the ground that the search fell within the doctrine of the *Carroll* case (R. 234-235). This holding, as we have shown, *supra*, pp. 16-20, was erroneous. Having thus entertained the motion, the court's erroneous denial of it on the merits was, we think, reversible error as to all the petitioners, the illegally seized evidence being a substantial part of the Government's case against each of them. In other words, the failure of these petitioners promptly to assert their right to suppress was cured by the trial court's action in con-

sidering the motion during the trial and denying it on the merits. This was the position tacitly taken by the Government and approved by the Second Circuit in *United States* v. *Di Re*, 159 F. 2d 818, 820. See also comment thereon by this Court in affirming that judgment on other grounds, 332 U.S. 581, 582. The Second Circuit said (159 F. 2d at 820):

> The prosecution has not upon this appeal attempted to support the competency of the coupons on the ground that DiRe did not apply for their suppression before the cause came on for trial. It has done well not to do so, because it abandoned any such objection when it undertook, as has appeared in the passages we have quoted, to defend the search upon the merits. Both sides having presented the point to him in this way, we should have no warrant for supposing that the judge did not decide it; but without so indicating had refused to pass on the point because DiRe had delayed too long in asserting it. We may assume, arguendo, that, if he had chosen that for his ground, and had for that reason refused to consider the merits, he would have been within his powers, but he was not obliged to do so; he was free to pass by the delay and to give DiRe the benefit of the objection, if in his judgment, that would not unduly interfere with the trial. "The rule is one of practice, and is not without exceptions." The last sentence of Rule 41(e), is in this regard merely a restatement of the law as it was. It

would be a parody on justice now to hold that, although the judge was wrong in the decision which he did make, nevertheless, since he might have refused to make it at all, DiRe may not complain of the error.

We have not overlooked the holding in Mr. Justice Douglas' opinion, which was the opinion of the Court, in *McDonald* v. *United States*, 335 U.S. 451, 456, that, where a motion for the return of illegally seized evidence was erroneously denied as to one defendant, the convictions of all co-defendants should be reversed. This was rested on the reasoning that had the motion been granted the evidence would not have been available to the Government for use at the trial. This part of the opinion was concurred in by Justices Murphy, Frankfurter and Jackson, although the latter two also thought both defendants there had independent standing, which had been timely asserted, to suppress the evidence. Since the position so taken has not been passed on by a majority of the Court, the question would seem still to be an open one. Accordingly we prefer to rest our argument here on the grounds stated above.

IV

Section 318 of the Communications Act is Not Unconstitutional as an Unlawful Delegation of Legislative Authority to the Commission

Since there was reversible error as to all petitioners in the admission of the illegally seized evi-

dence, there is no occasion to pass upon petitioners' contention that Section 318 of the Federal Communications Act (*supra*, p. 4) is unconstitutional in that it contains an unlawful delegation of legislative authority to the Commission (Br. 26-29). The "Court will not pass upon a constitutional question * * * if there is also present some other ground upon which the case may be disposed of" (Brandeis, J., concurring in *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 347).

In any event, there is no merit in petitioners' contention. They claim that the provision allowing the Commission to "waive or modify" the statutory requirement that a radio station shall only be operated by a licensed operator, upon a finding that "the public interest, convenience, or necessity will be served thereby," does not furnish an adequate standard upon which discretionary Commission action may be predicated, or by which the "average individual may gauge and determine the nature of the violation" (Br. 28).

Neither the record nor petitioners' brief discloses any contention that by reason of "public interest, convenience, or necessity" they were entitled to a Commission ruling exempting them from the provisions of Section 318; nor could they seriously make such a contention. Not having petitioned the Commission for such an exemption ruling, it is difficult to see how petitioners can complain that they were prejudiced by alleged vagueness of the

statute. We submit that the reasonable interpretation of Section 318 is that a radio operator's license is required unless the Commission makes findings of fact that an individual because of "public interest, convenience, or necessity" should be exempt from the provisions of Section 318; and until the Commission does make such findings, the individual is charged with knowledge that if he broadcasts without the required license, he will be violating the law.

In applying Section 307 of the Act, providing for the granting of station licenses by the Commission "if public convenience, interest, or necessity will be served thereby," this Court has regarded the quoted phrase as being not too vague, and "as concrete as the complicated factors for judgment in such a field of delegated authority permit." *Federal Commission* v. *Broadcasting Co.*, 309 U.S. 134, 137-138; *Regents* v. *Carroll*, 338 U.S. 586, 598. See also *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 225-226; *New York Central Securities Corp.* v. *United States*, 287 U.S. 12, 24-25. Just as the court below (R. 325-326), we see no reason for a different conclusion as to the phrase "public interest, convenience, or necessity" in Section 318.

CONCLUSION

For the reasons stated, we submit that the judgment below should be reversed as to all the petitioners.

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FEBRUARY 1952.

☆-U. S. GOVERNMENT PRINTING OFFICE, 1952 969376 750